

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

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CHMURA ECONOMICS & ANALYTICS, LLC

Plaintiff

vs.

Case No. 3:19-CV-00813

RICHARD LOMBARDO

Defendants

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REMOTE VIDEO DEPOSITION OF:
LESLIE PETERSON, VOL. II

Taken on:

May 6, 2020

9:00 a.m.

Taken at:

McGuire Woods, LLP

Gateway Plaza

800 East Canal Street

Richmond, VA

Kelliann D. Linberg, RPR, Notary Public

1 APPEARANCES: (Via Videoconference)

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15 ALSO PRESENT:

16 RICHARD LOMBARDO
17 JOHN CHMURA, via Zoom

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EXHIBIT CUSTODY: RETAINED BY COURT REPORTER

| 1 | INDEX OF EXHIBITS | | |
|----|-------------------|---|--------|
| 2 | Number | Description | Marked |
| 3 | Defendant's | | |
| 4 | Exhibit G | Previously Marked Copy of Letter Dated 3/28/2019 to Mr. Lombardo | 161 |
| 5 | Exhibit I | Copy of Handwritten Notes | 166 |
| 6 | Exhibit R | Copy of Email Dated 8/31/2017 Bates Labeled CHMURA000083-88 | 171 |
| 7 | Exhibit Q | Previously Marked Copy of Employee Handbook | 177 |
| 8 | Exhibit J | Copy of Richard Lombardo Commission Report 10-16 to 02-17, Bates CHMURA000131 | 184 |
| 9 | Exhibit K | Copy of Richard Lombardo Sales Commission, Bates CHMURA000132 | 184 |
| 10 | Exhibit AG | Copy of Excel/Native Version of Exhibit J, Placeholder, CHMURA000131 | 186 |
| 11 | Exhibit AH | Copy of Excel Spreadsheet for March 2017 through September 2019 | 195 |
| 12 | Exhibit V | Copy of Chmura Economics & Analytics, LLC's Objections and Responses to Richard Lombardo's First Interrogatories with Verification Page | 221 |
| 13 | Exhibit AA | Confidential Copy of Pricing Matrix Bates CHMURA0204226 | 233 |
| 14 | Exhibit AB | Confidential Copy of Pricing Matrix Bates CHMURA0204227 | 239 |
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1 Exhibit N Previously Marked Copy of 243
Email Dated 1/127/2017 from
2 Leslie Peterson, Bates
Chmura0056740

3 Exhibit S Previously Marked Copy of 244
4 Standard Operating Procedures
Dated 4/5/2019

5 Exhibit T Previously Marked Copy of 246
6 Email with Standard Operating
Procedures Dated 7/10/2019
7 Attached

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1 LESLIE PETERSON, being previously sworn and
2 with the previous agreed upon stipulation regarding the
3 need for this deposition to take place remotely because
4 of the Government's order for social distancing, said
5 as follows:

6 EXAMINATION OF LESLIE PETERSON, VOL. II
7 BY MS. COOPER:

8 Q. Good morning, Ms. Peterson.

9 A. Good morning.

10 Q. I want to pick up, I think, where we left
11 off, at least. There may be some duplication as we
12 pick up where we were.

13 MS. COOPER: Are you guys having an okay
14 time hearing me?

15 MS. SIEGMUND: Yes. I am going to turn you
16 up at bit. Before you get started, Ms. Peterson has
17 something she wants to correct from her deposition on
18 Thursday that she wanted to correct.

19 A. On the offer letter, I found an email and
20 talked with {audio distortion issue -- indiscernible }
21 and I signed it.

22 (Reporter asked for clarification).

23 A. I found an email, and I spoke with John
24 Chmura, and he wrote the offer letter. I reviewed it
25 and said it is good to go.

1 Q. Did you sign the offer letter?

2 A. It had my signature on it when I reviewed
3 it.

4 Q. I want to turn to -- back to Exhibit A,
5 Defendant's Exhibit A. I will put that up on the
6 screen.

7 Q. And turning your attention to -- well, let
8 me sort of scroll through it for a second. This is the
9 Notice of Deposition that we looked at last week, and
10 as we discussed, you were designated as a corporate
11 representative to testify about certain topics. I want
12 to turn your attention to Topic Number 12, "Job duties
13 of account manager and senior account manager between
14 February 1, 2015 and October 31, 2019." You were
15 designated as the corporate representative to testify
16 on this topic, correct?

17 A. Yes, ma'am.

18 Q. Can you walk me through the job duties of
19 an account manager during that time frame?

20 A. The job duties of an account manager was to
21 prospect potential clients, to set up a demo of JobsEQ,
22 our technology platform, to actually do the demo, to
23 close within a reasonable time, to counsel/advise the
24 client if there was funding issues. After closing the
25 deal, to appropriately document himself or -- and

1 through the accounting department, the details of the
2 license agreement, the regional territory of the
3 license, and the price and the terms of renewal.

4 To contact that client on a quarterly basis
5 to ensure that that client was using the product, and
6 and to determine if that client needed additional
7 training or help in any way from Chmura. And send out
8 a customer satisfaction survey 60 days prior to renewal
9 to determine the satisfaction level of that client with
10 the product and with Chmura, the sales team, and then
11 to ensure that this client renewed.

12 Q. Were there any other job duties of an
13 account manager that you can think of?

14 A. So this was a start-up sales team and some
15 of the things that we made decisions around were new.
16 I suppose there was product, but to what -- there was a
17 good deal of travel involved and outward public facing
18 meetings. So we had to get a comfort level that the
19 account managers could do that. And, generally, by the
20 time they became a senior account manager, we had the
21 confidence that they could manage all of that on their
22 own.

23 Q. When you say, manage all of that on their
24 own, what are they managing on their own?

25 A. Manage the conferences that they wanted to

1 attend, take care of their hotel and registration, to
2 do that in a manner that was ethical and appropriate in
3 terms of how they used the company credit card to pay
4 for travel and conferences, and have, traditionally,
5 maturity and act in a manner that was appropriate and
6 ethical. And we felt like --

7 Q. Did you not -- I'm sorry, go ahead.

8 A. No, that's fine. Go ahead.

9 Q. Did you not expect those same expectations
10 out of an account manager?

11 A. After you become comfortable with the
12 product and the culture of Chmura, and you prove
13 yourself to be an ethical person, you get more
14 opportunities for independence and to manage more of
15 the functions that Operations doesn't have to manage
16 for you.

17 Q. Can you give me some specific examples of
18 things that a senior account manager would manage that
19 an account manager did not manage?

20 A. Account managers went to the conferences
21 that we selected. A senior account manager was able to
22 advise us on which conferences they chose to attend
23 because they had some senior knowledge and talent
24 around those conferences, so that we had the best
25 return on investment possible.

1 Q. Other than choosing conferences, does a
2 senior account manager have any different job duties
3 than that of an account manager?

4 A. A senior account manager was more
5 intimately involved in marketing. They were more
6 involved in the innovation. They brought in more
7 intelligence from the industry about what needed to be
8 added to our internal road map because they had more
9 knowledge about the industry, and that's why they
10 became a senior account manager over an account
11 manager.

12 When an account manager comes in and they
13 have never sold software, let's say they sold vacuum
14 cleaners, or they were in collections, but they had no
15 experience in software sales, then that person had to
16 be inundated and immersed into the tech world. And
17 that takes several months to take somebody that maybe
18 takes -- maybe it's been six -- maybe it takes them six
19 years to get a four-year degree, and maybe they moved
20 from collections to sell vacuum cleaners. And to get
21 them ready to be in the tech world, with economists,
22 that's a very sophisticated industry, you are expected
23 to be on point at all times. There is a point at which
24 you -- being an account manager involves that, step up
25 to that challenge and deliver.

1 Q. How did the determination to move from --
2 move a salesperson from the account management position
3 to senior account management position be made?

4 A. At the time that we are talking about,
5 Mr. Lombardo, we did not have product managers, so
6 Austen and Rick were our product advisers. And so we
7 relied heavily on their insight into the clients'
8 needs. You know, what keeps you up at night, what do
9 you need? We relied heavily on that intelligence to be
10 more strategic in how we prioritized the road map.

11 Q. But just generally speaking, how would a
12 salesperson move from the account manager position to a
13 senior account manager position? How would that
14 happen?

15 A. I don't know what "generally speaking"
16 means.

17 Q. When a salesperson is moved from a -- how
18 does Chmura decide when a salesperson was ready for the
19 senior account manager title?

20 A. Well, in Mr. Lombardo's situation, he asked
21 for it and we talked about it, and we understood that
22 he was ready to move to the next level. And so we all
23 agreed -- it is a consensus based organization. We
24 don't make decisions by one person.

25 So we, senior leadership, decided that Rick

1 was valuable to us in terms of adding -- I mean, there
2 are 300 logs of him asking for GDP, 300 logs of that.
3 So he was our product developer. In smaller
4 innovations, you have to understand we wear a lot of
5 hats.

6 Q. I understand that. I don't think you are
7 answering my question, though. Let me take a step
8 back. Was there a written job description for account
9 managers?

10 A. There was not.

11 Q. Was there a written description for senior
12 account managers?

13 A. There was not.

14 Q. Were Mr. Steele and Mr. Lombardo the only
15 two senior account managers during Mr. Lombardo's
16 employment?

17 A. Yes. To the best of my knowledge, that is
18 true.

19 Q. When did Mr. -- sorry, go ahead.

20 A. No, they were A players. It was -- we
21 depend on each one of them. The question that you are
22 asking was May 17 of 2016?

23 Q. Mr. Lombardo became a senior account
24 manager on May 17, 2016?

25 A. To the best of my ability to remember, that

1 is the right month.

2 Q. Who made the decision to give the promotion
3 to senior account manager?

4 A. The SEA Group.

5 Q. I want to step back and walk through these
6 job duties with you. First, with respect to account
7 manager, you said that one of the job duties was to
8 prospect clients. Can you explain to me what that is
9 or what that means?

10 A. That means that you do research to figure
11 out who the person in the organization is that you need
12 to reach out to; that is, a user of technology that can
13 get to the decision maker to adopt technology. That's
14 what prospecting is. It is getting to the right
15 person. Is that your question? Did I answer your
16 question?

17 Q. Yes, you did. You did.

18 A. Okay.

19 Q. And then you said that the account manager
20 was responsible for setting up demos and -- we will
21 just stop at setting up demos. Can you explain that a
22 little bit further?

23 A. Setting up demos? That means getting on
24 the calendar, being prepared to do the demo in a
25 customized manner that answers their pain point, what

1 keeps you up at night.

2 Q. And then you said that an account manager
3 was responsible for doing the demo. What did that
4 mean?

5 A. So when you come in from like, let's say an
6 industry that you have no knowledge of -- economics is
7 a pretty sophisticated social science industry. And
8 let's say you come from vacuum cleaners or horse
9 medicine, or whatever, and you have no clue about the
10 differences between a social science and a physical
11 science, like chemistry and biology, so you have to
12 understand the laws of economics and underlying
13 assumptions. So that's a daunting task for anyone
14 that's never been exposed to understanding economics
15 theory. Did I answer your question?

16 Q. I'm not sure. You mentioned one of the job
17 duties of an account manager is to do the demo. Is
18 it --

19 A. You can't do a demo unless you understand
20 the fundamentals of economics.

21 Q. I understand that, but what does doing a
22 demo mean? If an account manager is doing that demo,
23 what does that mean?

24 A. That means they are on a shared screen and
25 they are going through analytics and our technology

1 platform, which is JobsEQ, and they are doing it in a
2 manner that answers that client's pain point.

3 Q. So the demo would be between the account
4 manager and the prospective client; is that correct?

5 A. We expect that by our six months period.
6 In the three months, one to three month period, we
7 expect them to be demo ready internally, and then they
8 can demonstrate between three months and six months
9 when they are successfully doing a demo with a client
10 on their own. They don't have to have an economist
11 sitting there with them.

12 Q. Who are the economists at Chmura at the
13 time Mr. Lombardo was employed?

14 A. I'm sorry, there's some kind of noise. Do
15 you hear that? It's like a --

16 MS. SIEGMUND: Yeah.

17 {Technical issues addressed}.

18 A. Can you repeat the question? I'm sorry,
19 Christine.

20 Q. I may be moving on to another question, so
21 forgive me.

22 When an account manager is doing a demo, it
23 would be the account manager on their computer doing a
24 demo to a potential customer on the potential
25 customer's computer; is that correct?

1 A. Yes, it's like, GoToMeeting or Zoom or
2 anything like that, like we are doing right now.

3 Q. And then you said that one of the
4 expectations for an account manager was that they
5 closed within a reasonable time. First of all, can you
6 define "closed" for me, what you mean by that?

7 A. That you won a client.

8 Q. And what does Chmura consider a reasonable
9 time?

10 A. Well, that is a great question. There are,
11 in our business to government clients, there are cycles
12 of budgets. And depending on when you get that demo
13 completed within their budget process, it could be --
14 it could be nine months, it could be 12 months, it
15 could be today. It varies.

16 Q. So there was no set time as to what Chmura
17 considered a reasonable time to close after a demo; is
18 that fair?

19 A. It depended on the client and if they would
20 be G to B. B to B doesn't have those government
21 imposed budgetary profit fees that G to B has. B to B
22 does not have those barriers that B to G has. Let me
23 be --

24 Q. So what was Chmura's expectations with what
25 you say, B to G? Is that business to government?

1 A. Yes.

2 Q. What was the expectation with the business
3 to government concerning prospects?

4 A. The expectation was that you understand the
5 B to G business cycle: Were they annual? Did they go
6 January to December? Did they go July 1 to June 30th?

7 And in that understanding, you had to -- we
8 asked that you get very specific in setting up demos in
9 the budgetary planning process, which can be February
10 to May.

11 Q. And what if --

12 A. Or if your fiscal year was January -- or
13 July 1 to June 30th.

14 Q. And B to B is business to business,
15 correct?

16 A. It is.

17 Q. What was the expectation with respect to a
18 reasonable time to close after a demo with business to
19 business?

20 A. As soon as possible.

21 Q. What was the average close rate or close
22 time between a demo and signing --

23 A. There --

24 MS. SIEGMUND: Wait until --

25 A. There is not --

1 Q. Yeah, let me finish my question. What was
2 the average time between a business to business from a
3 demo to closure, if you know?

4 A. I don't have that number.

5 Q. Were account managers -- we had discussed
6 that account managers were doing these demos from their
7 computers. Were they -- at the time they were doing
8 the demos, were they located in -- I guess, in their
9 office -- in a Chmura office when they were doing these
10 demos?

11 A. Not always.

12 Q. Where else would they be if they were doing
13 a demo?

14 A. They might be at a conference or they might
15 be at the customer's location on site.

16 Q. How often would an account manager go to an
17 on-site -- go to a client on site?

18 A. I don't have that number.

19 Q. You also mention one of the job duties of
20 an account manager was to counsel a client. Can you
21 explain that a little bit more?

22 A. As you get inside an organization and you
23 are dealing with the data people that are reporting to
24 their management, to a board, and they don't have a big
25 picture of funding. So if you are counseling a client

1 that's in workforce, for example, you need to
2 understand the Workforce Investment and Opportunity Act
3 in depth to be able to advise what the law allows in
4 terms of funding for services.

5 And that is a visual -- they might not know
6 that. They might not know that they can take JobsEQ
7 and put it in something other than administrative
8 funds; for example, program funds, where you have
9 counselors that are seeing job seekers on a daily
10 basis. And that's under the program funds and not the
11 administrative funds. You need to be able to advise
12 them, Hey, you can do that and it is legal.

13 Q. So if --

14 A. Did you understand that? Did you
15 understand that?

16 Q. I think I do, but I am asking some
17 follow-up questions on it.

18 A. Okay.

19 Q. The Workforce Investment Opportunity Act,
20 what is that?

21 A. That is a federal program under the
22 Department of Labor where funds are sent to the state,
23 each state, and it's based on need. It's something --
24 some of it you are seeing right now with Covid. But
25 the need is based, traditionally, on unemployment

1 rates.

2 So each state has these funds that come
3 down from the Department of Labor, and they take the
4 15% to do the administrative piece at the state level.
5 And the chief locally elected officials, called CLEOs,
6 are responsible for the release of fiduciary
7 disbursement of those funds at the local level. So you
8 can imagine it gets pretty political pretty quickly at
9 the local level. So you have to know the law, and our
10 folks know that. They get to be experts in WIOA pretty
11 quickly.

12 Q. And how do they develop, or how do they
13 become experts in that?

14 A. Well, I'm a subject matter expert. I ran a
15 Workforce Investment for four years, so I am the go-to
16 person at Chmura for that.

17 Q. But the account --

18 A. You learn a lot in conferences. They learn
19 more at conferences.

20 Q. Would account managers be expected to
21 advise prospective clients as to their legal rights
22 under that Workforce Investment Opportunity Act?

23 MS. SIEGMUND: Object to the form of the
24 question.

25 A. I don't think that that's what we are

1 talking about. They provide insight into the law, but
2 they do not legally counsel them.

3 Q. Can you describe to me the difference?

4 A. We don't act in a legal capacity with our
5 client. We are advisers.

6 Q. What type of advice are you -- would an
7 account manager give to a prospective client, or
8 clients, regarding the Workforce Investment Opportunity
9 Act?

10 A. As we discussed earlier, for the awareness
11 of budgetary cycles, an awareness of the barriers that
12 go along with job seekers that are taking advantage of
13 these funds, and it is being able to advise which
14 funding stream that you can put a technology platform
15 under, like JobsEQ, and it satisfies the requirement of
16 WIOA.

17 Q. And an account manager would be expected to
18 understand the budgetary cycles and categories --
19 category spending that can be used to purchase JobsEQ;
20 is that fair?

21 A. That's up to them. If they want to be an A
22 player, they will do that. If they want to be a B
23 player, they won't.

24 Q. And then would an account manager
25 communicate that to the prospective client, or client?

1 A. Communicate what?

2 Q. The budgetary cycle, or what they
3 understood the budgetary cycle to be?

4 A. There are a lot of clients in WIOA that
5 don't understand WIOA. It is unfortunate, with our
6 taxpayer money, right? It is unfortunate, but it
7 happens a lot.

8 Q. So the account manager then would walk them
9 through that; is that fair?

10 A. Walk them through.

11 Q. I think -- are you calling it WIOA? Is
12 that how you're saying it?

13 A. WIOA. That's the industry -- that's how
14 the industry speak.

15 Q. I want to speak like that, so I am going to
16 use it. So I want to say it, too.

17 A. It's WIOA.

18 Q. WIOA. I got it. Would an account manager
19 talk to a prospective client, or client, about the
20 budgetary cycles set forth in WIOA?

21 A. I mean, they -- like I said, if they want
22 to be an A player, they will. If they are satisfied
23 with the status quo, they might not. They might just
24 do the same demo that they would do for an economic
25 developer, or that they would do for a workforce

1 client. It depends on the sophistication of that
2 employee. There is no requirement there. Is that
3 clear? I want to be clear. Is that clear?

4 Q. It's clear to me, yes.

5 A. Okay.

6 Q. You also said the job requirements for
7 account manager was to document in Salesforce. Was
8 Salesforce the primary CRM platform that Chmura used?

9 A. Yes.

10 Q. And so was an account manager required to
11 put any communications that they had with a prospective
12 client, or client, in Salesforce?

13 A. Yes.

14 Q. What other types of information was an
15 account manager required to document in Salesforce?

16 A. I don't understand the question.

17 Q. Was all information pertaining to -- well,
18 let me go back. How did an account manager use
19 Salesforce?

20 A. So they documented phone calls, emails,
21 opportunity status, the details of the region. The
22 status was where they are enclosing any information
23 that is needed to understand the life cycle of that
24 client.

25 Q. And then another one of the job

1 requirements you mentioned was to -- an account manager
2 was to ensure that the client is using the platform
3 and --

4 A. Yeah, that's very important, yeah.

5 Q. And how would an account manager go about
6 doing that?

7 A. Well, in today's environment, it is going
8 to change, but the account managers have historically
9 enjoyed the Friday Morning Usage Report. That Friday
10 Morning Usage Report details the usage from all
11 clients. And each account manager has historically had
12 access to that, and that's changing, but for today,
13 that's the situation.

14 Q. But when Mr. Lombardo was employed, he
15 would have had that Friday Morning Report?

16 A. Oh, yeah. Oh, yeah, he had access to
17 all --

18 Q. What was the expectation for an account
19 manager once they got that information, or that usage
20 report, what was the expectation that an account
21 manager would do with that report?

22 A. If there is no useage and people are not
23 using, you have got to get in there and figure out
24 what's the problem. Is it training, is it the wrong
25 person on the platform? How can we get you to use

1 JobsEQ?

2 Because that's the secret to renewal. And
3 if you don't have the right person using it, then you
4 need to help them figure out who in their organization
5 is the right person. And it is difficult when you've
6 got a shop of three people.

7 You know, when you are a small innovation
8 and you've got a shop of three people, you've got to
9 make technology a priority, and they often balance
10 technology and data with implementation programs. And
11 that becomes so political and so amorphous, that it is
12 hard to be data driven in some of these environments
13 that we are in.

14 Q. How would an account manager, I think your
15 word was, get in there, to ensure that the client was
16 using it, or to -- let me rephrase that.

17 How would an account manager follow-up with
18 a client regarding their usage?

19 A. They have the option to go by email and the
20 phone. They are also --

21 Q. So --

22 A. They are also on track so they can monitor
23 the questions that are coming in that reflect they
24 don't have a certain level of knowledge or that they
25 are super users and they don't need any help.

1 Q. You also mentioned that one of the job
2 requirements was to obtain a customer satisfaction
3 survey.

4 A. Yes.

5 Q. Can you explain what the customer
6 satisfaction survey is?

7 A. It consist of about 15 questions to
8 determine the characteristics of the user in terms of
9 their knowledge of the platform and their satisfaction
10 with the platform. It is also a very good way to get
11 information for the road map, things that they would
12 like to see added. And so the account manager uses
13 that to ensure that they care enough about that
14 information for the company and for their client to be
15 more strategic.

16 Q. And you mentioned another one of those type
17 of job duties was ensure client renewal. Can you
18 explain that a little bit?

19 A. You are coming up on 60 days before
20 renewal, and you have taken the steps laid out for you,
21 quarter by quarter, with touch points to there, so that
22 you have confidence that client is going to renew and
23 you are not surprised when they don't.

24 Q. How many touch points was an account
25 manager expected to make throughout -- after closing a

1 sale prior to renewal?

2 A. As we previously discussed, it is
3 quarterly.

4 Q. You also mentioned that one of the job
5 duties of an account manager was to travel. And I may
6 not have gotten all of your answer down, but forgive
7 me, where would an account manager travel to?

8 A. They would travel onsite to clients to do
9 demos, and they would travel to conferences. And they
10 would travel between the Cleveland office and the
11 Richmond office. We had sales summits, and they would
12 come down for that, and it would be, you know, an
13 immersive experience where we would get to see and hear
14 from them, strategically, what their plans were for the
15 next year in terms of how they were going to manage
16 their -- not manage -- how they were going to manage
17 getting their client and retaining clients.

18 So it was very personal. And they got to
19 share with us on a very detailed level what their plans
20 were. This is their plans, not ours.

21 Q. Within a year, take 2019 for example, how
22 frequently did an account manager travel to an onsite
23 client visit?

24 A. So you're a couple of steps removed with me
25 on that. That was -- 2019 was largely coming through

1 an interim account -- an interim sales manager to
2 March, our interview with Eli in April. He got placed
3 with Eli.

4 So I know that we went from \$220,000 to
5 \$150,000 that year for company profitability reasons.
6 So it varied. It varied on, you know, depending on our
7 profit.

8 Q. What's the 220 to 150,000 number? What
9 number is that you are going giving me?

10 A. That's an expenditure number that's on our
11 books based on what we were willing to invest in travel
12 based on company profit, and nothing to do with the
13 account managers.

14 Q. I guess my question is, how many onsite
15 visits did account managers make last year?

16 A. I don't have those numbers, Christine. I
17 just don't. You asked me that last week. I don't have
18 those numbers.

19 Q. What about how many conferences the account
20 managers attended last year?

21 A. Why are we focusing on 2019?

22 Q. Just trying to give you a time frame.

23 A. Well, I mean, let's talk about within the
24 last five years. We went from attending 25 to 15. I
25 mean, if the business cycle -- let me help you

1 understand. Business cycles ebb and flow based upon
2 profits and expenditures.

3 We added 18 people last year. We did not
4 have the cash flow to support 25 conferences. So last
5 year it was scaled back a bit. Does that answer your
6 question?

7 Q. I think it does. So in 2019, the account
8 managers attended approximately 15 conferences?

9 A. I don't know. I am giving you numbers that
10 I can't support. I am just saying in the business
11 cycle, things ebb and flow in terms of what you can
12 spend on marketing and travel, and so 2019 was not one
13 of our better years.

14 Q. Okay. As you sit here today, is it fair to
15 say you don't know the specific number of onsite visits
16 the account managers made in 2019?

17 A. No, I did not come prepared to discuss
18 that.

19 Q. And is it fair to say you don't know the
20 specific number of conferences that the account
21 managers attended in 2019?

22 A. I am not prepared to give you a number.
23 Sorry.

24 Q. What about for 2015 through 2018? Do you
25 have numbers for those years?

1 A. I can give you investment numbers, and I
2 gave them to you, but I am happy to repeat them,
3 which mean --

4 Q. Investment numbers?

5 A. Investment numbers. Expenditures numbers.

6 Q. Okay.

7 A. 220,000 is the range, to 150,000. The
8 number of conferences, it changes every year because
9 the account managers come back and they say, let's not
10 do this one next year, or let's do this one next year.
11 And they become advisers to management on what
12 conferences we attend. Is that helpful? Does that
13 explain it to you? I am trying to be precise.

14 Q. You also mentioned that the account
15 managers, one of the job duties is public facing
16 meetings. Can you describe to me what that means?

17 A. The public facing meeting? Yeah, sure, I
18 am happy to. So you are not in the office. You are at
19 a conference or at a client's location, or in a board
20 room and you're speaking and representing Chmura.
21 There are a lot of expectations around that in terms of
22 professionalism.

23 Q. And like with the conferences and the
24 onsite visits, do you have a specific number of times
25 you --

1 A. I do not have any numbers. I do not have
2 any numbers --

3 Q. Again, wait for me to finish my question so
4 the record is clear.

5 Do you have a specific number for the
6 amount of public facing meetings the account managers
7 attended?

8 A. Finished?

9 I don't.

10 Q. Are there any other duties, as you sit here
11 today, you can think of for an account manager before I
12 move on to senior account manager?

13 A. As I told you last week, senior account
14 manager has a certain level of tenure, knowledge and
15 skills and talent; that if you came in from the vacuum
16 cleaners industry or collections industry, you would
17 not have that on day one. It takes time to develop a
18 senior account manager, and it takes respect and
19 appreciation for what they do to support the company.
20 So we are --

21 Q. Let me pick that apart a little bit -- oh,
22 go ahead.

23 A. No.

24 Q. Are the jobs -- are the actual job duties
25 of a senior account manager any different than the job

1 duties of an account manager, or are they just more
2 senior and experienced than the account manager duties?

3 A. As we discussed, an entry level account
4 manager is not going to understand the laws of
5 economics, they are not going to understand the client.
6 It takes a while to do that. And that translates into
7 productivity, and that translates into closing deals.

8 That translates into developing the
9 character of that individual. And in the spirit of
10 continuous improvement, that involves shaping that
11 person's character, helping them shape their character.
12 And in the situation of Mr. Lombardo, that was a
13 particular challenge.

14 Q. But their day-to-day activities, what they
15 did, their job duties, was a senior account manager's
16 job duties, their actual duties that they did, were
17 they the same as an account manager?

18 A. No. I would say that an account manager
19 doesn't get the opportunity to have client facings that
20 a senior account manager has. There is a reputation
21 risk here.

22 Q. Okay. Were there any other differences
23 between a senior account manager and an account
24 manager?

25 A. There are a lot of differences. It has to

1 do with, mainly, ethics and trust. And those are hard
2 things to measure and hard things to manage.

3 Q. Now, we have gone through the job duties of
4 an account manager. We have gone through the job
5 duties of a senior account manager. When Mr. Lombardo
6 was an account manager, the job duties we just
7 discussed, were those Mr. Lombardo's job duties as an
8 account manager?

9 A. Were those the what?

10 Q. The job duties. When Mr. Lombardo was an
11 account manager at Chmura, were his job duties any
12 different than the ones we just discussed for an
13 account manager?

14 A. His productivity, efficiency, his
15 knowledge and his skill sets were totally different. I
16 have been telling you over and over: Talent,
17 knowledge, tenure.

18 Q. But when he was an account manager -- can
19 you define for me what you consider a job duty? I
20 think we are having a little disconnect. I want to
21 understand what your understanding of job duty is.

22 A. Okay. Let me try to answer that in a
23 manner that helps you. This is not a union. It is not
24 a blue collar organization. We don't sell vacuum
25 cleaners.

1 This is a professional business services
2 industry, and with that comes knowledge of the product,
3 knowledge of the industry. And that can't happen on
4 day one as an account manager. That takes time to
5 develop.

6 Sorry. Is Mr. Lombardo in the room? I see
7 you looking.

8 Q. He is in the room. He has been with us for
9 all the depositions, yes.

10 A. Okay. Good. Thank you for letting me
11 know.

12 Q. Were the job duties you described for an
13 account manager any different than the job duties
14 Mr. Lombardo was expected to perform when Mr. Lombardo
15 had the title of account manager?

16 A. I don't understand that question. Can you
17 unpack it a different way?

18 Q. Well, Mr. Lombardo, his title when he
19 started at Chmura, was account manager, correct?

20 A. Yes.

21 Q. And we just went through, and you listed
22 for me a bunch of job duties that account managers had
23 at Chmura, correct?

24 A. Yes.

25 Q. Were Mr. Lombardo's job duties as account

1 manager, when he held that title, any different than
2 the job duties you listed for me?

3 A. As we've discussed, his job duties became
4 more proficient. He was rewarded for that, highly
5 compensated.

6 Q. And was he rewarded by being given the
7 title, senior account manager?

8 A. No, he was more immersed in the
9 organization. He became a vital adviser to the road
10 map.

11 Q. Why don't we talk about the road map for a
12 second. What is the road map?

13 THE WITNESS: I need a break.

14 MS. SIEGMUND: Answer the question and then
15 we can take a break.

16 A. Okay. As you have had several
17 conversations with Chmura, the road map is our plan for
18 innovation for JobsEQ.

19 MS. COOPER: Okay. We can take a break.
20 How long would you like to take, five
21 minutes, 10 minutes?

22 THE WITNESS: Just need to go to the
23 bathroom.

24 - - - - -
25 (Short recess taken).

1 - - - - -

2 BY MS. COOPER:

3 Q. I think we left -- where we left off before
4 the short break was describing what the road map was.
5 And I think you described it as a map for innovation.
6 Can you tell me what -- how -- what was consisted on
7 the road map?

8 A. Future analytics.

9 Q. What does that mean?

10 A. Future technology offering. Future
11 benefits to clients.

12 Q. Can you tell me the way that something
13 would be put on the road map?

14 A. There are multiple ways. Account managers
15 are the primary advisers of the road map. There is
16 also chat and other, customer satisfaction surveys.
17 Multiple ways, yes.

18 Q. Were there any standard operating
19 procedures regarding the road map?

20 A. Yes.

21 Q. Can you describe those?

22 A. No, I couldn't. I'm not the owner of the
23 road map.

24 Q. Who is the owner of the road map?

25 A. Dave Terrano.

1 Q. I'm sorry, can you say that again?

2 A. Dave Terrano.

3 Q. And is he an employee of Chmura?

4 A. Yes.

5 Q. When you say, owner of the road map, what
6 do you mean by that?

7 A. He is responsible for the road map.

8 Q. How were items on the road map prioritized?

9 A. I wouldn't pretend to know. It's --

10 Q. Did you have any involvement in deciding
11 what on the road map would be pursued?

12 A. Minimal.

13 Q. Can you describe what your involvement in
14 the road map, if any, was?

15 A. I was kept abreast.

16 Q. With respect to Mr. Lombardo specifically,
17 did his job duties differ from that of an account
18 manager?

19 A. I don't think I understand that question.
20 He was an account manager.

21 Q. With respect to a senior account manager, I
22 believe you testified earlier that they had -- you
23 testified they had more intimate knowledge -- sorry,
24 more intimate involvement in marketing. Can you
25 explain to me what you meant by that?

1 A. They develop the marketing material.

2 Q. And how would a senior market -- sorry, a
3 senior account manager develop marketing material?

4 A. They would write down their ideas and
5 suggestions and it would get before the marketing
6 division and be developed based on their needs.

7 Q. So would the marketing -- can I say
8 marketing team? Is that fair? Is there a marketing
9 team or marketing department?

10 A. Yeah, sure.

11 Q. Would the marketing team -- well, who is on
12 the marketing team?

13 A. Sometimes I think everybody is. Everybody
14 thinks they are a marketer, right?

15 But to answer your question, it would be
16 Leslie, Avery Simmons, Jim Hayes.

17 Q. Now, you said Leslie. Are you referring to
18 yourself or another Leslie?

19 A. There is only one at Chmura.

20 Q. And you said that the senior account
21 managers would write down their ideas and suggestions
22 and provide them to the marketing team; is that right?

23 A. Yes.

24 Q. And then what would the marketing team do
25 with those ideas?

1 A. Massage, improve.

2 Q. Can you give me an example of any kind of
3 an idea that an account manager -- sorry -- senior
4 account manager provided to the marketing team that was
5 developed into marketing materials?

6 A. Sure. Particularly in Mr. Lombardo's case,
7 he needed vertical specific buyers, so the marketing
8 team went to work to develop scratch cards at his
9 suggestion.

10 Q. So Mr. Lombardo provided the suggestion and
11 the marketing team developed the material; is that
12 fair?

13 A. Mr. Lombardo requested the marketing
14 material speak to the vertical of the industry that he
15 was attending a conference for.

16 Q. Did the marketing team, were they required
17 to produce that vertical specific flyer because
18 Mr. Lombardo asked for it?

19 A. We did everything we could to make
20 Mr. Lombardo happy.

21 Q. Was the marketing team required to take
22 that suggestion and create the vertical flyer in that
23 instance?

24 A. There is no requirement.

25 Q. You also mentioned that senior account

1 managers had responsibilities with respect to
2 innovation. Can you explain that a little bit more?

3 A. As I said earlier, that has to do with
4 what's on the road map, priority of what's on the road
5 map.

6 Q. Was there any other job duty of the senior
7 account manager? Oh, yes, there was, so let me come
8 back to this before I move onto that question.

9 You said that senior account managers had
10 the job duty of managing conferences. Can you explain
11 what you mean by managing conferences?

12 A. So selecting conferences they wanted to
13 attend, booking flights, and in Mr. Lombardo's case,
14 booking everybody's flight, attending the conference,
15 setting up the booth, being prepared to do demos, being
16 prepared to get contacts, being prepared to follow-up
17 on those contacts to prepare a list of the attendees
18 that they had public facing with. Now, what -- it is
19 very critical that you follow up on contacts within the
20 week that you get back, otherwise, those leads get
21 stale.

22 Q. Did -- if a senior account manager asked to
23 go a conference, was it automatically approved that
24 they attend?

25 A. It depended on the budget.

1 Q. Was there ever at time that a senior
2 account manager asked to go a conference and they were
3 not permitted to attend?

4 A. I'm not prepared to say that because it
5 changes every year depending on the budget.

6 Q. Who had the final say on what conference
7 the account manager or senior account managers would
8 attend?

9 A. It was pretty much the account managers.
10 We tried to support them in every way we could.

11 Q. Were there meetings regarding conference
12 planning for the year?

13 A. There -- as we grew, yes. Not initially,
14 but we evolved to that, yes.

15 Q. Who would be in those meetings?

16 A. That also changed annually. Different
17 people.

18 Q. Take 2019, who was in the meeting for 2019?

19 A. Jim Hayes, Avery Simmons, myself.
20 Marketing. The conferences went under my budget.

21 Q. Was there anyone else in those meetings?

22 A. Account managers would be pulled in, of
23 course. They were central to the whole planning.

24 Q. Were the account managers there when the
25 decision whether to attend the conference was made?

1 A. So that's kind of hard to do when you have
2 account managers doing demos and doing what their daily
3 routine is in a distributive workforce such as we have
4 at Chmura.

5 Q. So the answer is no?

6 A. At times they were, at times they weren't.

7 Q. When Mr. Lombardo was a senior account
8 manager, were his duties any different than the ones we
9 just discussed?

10 A. I don't know what you mean by, "what we
11 just discussed."

12 Q. Well, you listed involvement in marketing,
13 innovation and conferences. Were his job duties, in
14 addition to the account manager job duties, were
15 Mr. Lombardo's senior account manager job duties any
16 different than the ones we just discussed?

17 A. No.

18 Q. Did Chmura have an outside sales team?

19 A. No.

20 Q. One follow-up question, did Mr. Lombardo
21 have -- was there a written job description for
22 Mr. Lombardo's position?

23 A. We evolved to that, yes.

24 Q. Was Mr. Lombardo ever provided a written
25 job description?

1 A. I don't know. He didn't report to me at
2 that time.

3 Q. Do you know when a written description was
4 created by Chmura?

5 A. It was created to recruit other account
6 managers. I don't know when .

7 Q. Bear with me for one second.

8 All right. I want to switch topics. I am
9 going to show you again, and share my screen and show
10 you what's been marked as Exhibit A again. And you
11 have been designated as the witness, the corporate
12 representative to testify as to Topic Number 16,
13 "Jennifer Ludvik's compensation, or denial of
14 compensation, for overtime hours worked"; is that
15 correct?

16 A. Yes.

17 Q. Who was Jennifer Ludvik?

18 A. She is an individual that was in the
19 Richmond area that was an employee of SLAIT, recruiting
20 services.

21 Q. What was her role at Chmura?

22 A. So the model for this situation was -- it
23 is kind of like test driving a car. So SLAIT's model
24 is that this employee remains an employee of SLAIT
25 until the client, which is Chmura, chooses to employ or

1 not employ that SLAIT employee.

2 Q. So she was -- well, let me ask this, what
3 job function was she doing at Chmura? I understand she
4 wasn't an employee of Chmura, but what job function was
5 she doing?

6 A. We were testing her out to be an account
7 manager.

8 Q. And were her job duties those of account
9 manager that we discussed --

10 A. Yes.

11 Q. -- not long ago?

12 A. Yes.

13 Q. And can you say again who she was employed
14 by, or spell it for me so I know for sure what you are
15 saying?

16 A. S-L-A-I-T.

17 Q. Okay. Got it. Did Ms. Ludvik ever make a
18 claim that she should be paid for more than 40 hours a
19 week?

20 A. Yes.

21 Q. How was that handled?

22 A. She was not an employee of Chmura. She had
23 been there, maybe, a week and had limited knowledge of
24 JobsEQ, and not only that, but the paperwork was not
25 accurate. She was billed to us -- she was,

1 contractually, a salary exempt employee, but when we
2 got the bill, it had overtime hours on it that we did
3 not approve or understand why she needed overtime in
4 this early tenure.

5 And so we confronted SLAIT, and they
6 acknowledged that they made a mistake, and they paid
7 her overtime. And we decided we didn't want to work
8 with her because she was not transparent. Just a short
9 tenure.

10 Q. How short?

11 A. Real short. Like three weeks.

12 Q. Did you have -- or Chmura have any
13 discussions with SLAIT regarding her status as exempt
14 or non-exempt?

15 A. No.

16 Q. And I think you already answered this, so I
17 am going to ask it just to be clear. Did Chmura pay
18 for the hours above 40?

19 A. No.

20 Q. I think you said SLAIT paid for the hours
21 above 40; is that correct?

22 A. Yes.

23 Q. At the time that was going on, did Chmura
24 ever consider reclassifying the account managers from
25 exempt to non-exempt, its own employees?

1 A. No.

2 Q. Okay. Taking you to a new topic, I am
3 going to show you -- share my screen again. You have
4 been designated as a corporate representative to
5 testify as to "Mr. Lombardo's performance, including
6 sales performance, and the methods used to track
7 Mr. Lombardo's performance"; is that correct?

8 A. Yes.

9 Q. As stated on here, on Exhibit A.
10 How was Mr. Lombardo's sales performance
11 during his tenure at Chmura?

12 A. Outstanding.

13 Q. Was he the top sales performer?

14 A. Yes.

15 Q. Do you know, over his tenure, what percent
16 of new sales Mr. Lombardo was responsible for
17 generating?

18 A. Consistently above quota.

19 Q. Do you have a more exact figure?

20 A. I do not.

21 Q. How were his -- let me ask, do you know
22 what Mr. Lombardo's closing percentage was from -- if
23 he gave a demo to closing the deal?

24 A. The average close -- demo to close ratio is
25 24.1, 25%.

1 Q. Was Mr. Lombardo higher than that?

2 A. It is an average number that we collect for
3 the team.

4 Q. Did you ever evaluate, or did Chmura ever
5 evaluate the individual account manager's, or senior
6 account manager's percentage as to their close rate?

7 A. Not individually. We operated as a team.

8 Q. How about renewal rates? How did
9 Mr. Lombardo perform with respect to renewal rates?

10 A. 89%.

11 Q. Did you say 89?

12 A. I did.

13 Q. Do you know what the average renewal rate
14 percentage was?

15 A. 85.

16 Q. How did Chmura track the sales performance
17 of its account managers and senior account managers?

18 A. Based on quota. Three sales per month.

19 Q. Do you know how much revenue
20 Mr. Lombardo's -- take for 2019, or a whole year,
21 because he was there for 2018 -- do you know how much
22 of the revenue for the sale of JobsEQ Mr. Lombardo was
23 -- could be attributed to Mr. Lombardo?

24 A. I don't want to say a number. I can give
25 you a percentage. I think it was 49%.

1 Q. Do you know for 2019?

2 A. No. He wasn't there the entire year.

3 Q. What other metric was Mr. Lombardo reviewed
4 on?

5 A. I would say Mr. Lombardo's weakest area was
6 in the customer satisfaction survey.

7 Q. And can you give me some examples or an
8 explanation?

9 A. He didn't like to do them, so he often did
10 not do them.

11 Q. To complete a customer satisfaction survey,
12 what does an account manager, or senior account manager
13 have to do?

14 A. Get the survey completed.

15 Q. What was the process, or what -- how would
16 an account manager go about doing that? I am just
17 looking for how the process worked.

18 A. Well, it's real simple. You send an email.

19 Q. Did he obtain customer satisfaction
20 surveys, any customer satisfaction surveys?

21 A. A few. He mostly complained about them.

22 Q. Were there any other metrics Chmura looked
23 at in evaluating Mr. Lombardo?

24 A. In the case of Mr. Lombardo, it was
25 overwhelmingly dealing with the balance of an A player,

1 and when you have an A player, you tolerate a lot.

2 Q. I want to turn to Topic Number 21 on
3 Exhibit A. You were designated as the corporate
4 representative to testify with regards to, "Warnings
5 given to, or disciplinary action taken by Chmura
6 against Mr. Lombardo"; is that correct?

7 A. Yes.

8 Q. Did Chmura keep a written documentation of
9 any warnings or disciplinary action given to
10 Mr. Lombardo?

11 A. Yes.

12 Q. Can you describe what type of writing
13 exists?

14 A. Emails, handwritten notes, witnesses.

15 Q. Well, the witnesses, were they witness
16 statements?

17 A. Witnesses that sat in on the conversations
18 of a disciplinary manner.

19 Q. But they didn't put anything in writing; is
20 that correct?

21 A. They -- no, they didn't need to do that.

22 Q. And would all of the written materials be
23 found in Mr. Lombardo's personnel file?

24 A. They should be.

25 Q. Can you walk me through what warnings

1 Mr. Lombardo was given during his tenure at Chmura?

2 A. There are so many. I mean, really? You
3 want me to do this?

4 Q. Well, were they all in his personnel file?

5 A. No. You just want what went into his
6 personnel file?

7 Q. Let's start there.

8 A. Let's start with the personnel file, is
9 that what you said?

10 Q. Yes, please.

11 A. So Mr. Lombardo was notoriously known for
12 his inability to submit a correct reimbursement form
13 for travel. Mr. Lombardo was notorious for wanting to
14 book everybody's flight on his credit card so that he
15 got points. Plus, we had to put out policy that all
16 employees had to use their employee credit card because
17 the transaction costs was going out the roof with
18 Mr. Lombardo's practices.

19 So we had to adopt a policy of personal
20 credit cards, and everybody had to book their own
21 flights, their own hotel. However, Mr. Lombardo, as in
22 most cases, ignored policy and did things his own way.
23 So we had to document that. And Christine Steigmann
24 was responsible for documenting that, and she was
25 sloppy, so I'm not sure that it actually made it

1 entirely into his personnel file, but I know there was
2 documentation handed to her to do that.

3 Mr. Lombardo went to the Texas Economic
4 Development Conference in 2018, and the conference took
5 place at the hotel, and there was a -- there was a
6 charge to valet, a rental car, which was not needed,
7 resulting in transaction costs. And we had to
8 investigate, why did this happen? And Mr. Lombardo
9 taking his time to respond. And at that same
10 conference, there was alcohol bills that were not
11 approved because it was not a dinner, it was in a bar.

12 And the problem with that is if you are in
13 a bar drinking at a conference, these bars are very
14 open space, and clients and prospects can say, why is
15 he drinking with that client and not drinking with me?
16 So there was a long discussion about that with
17 Mr. Lombardo with Kyle West and Greg Chmura present.
18 That went in his personnel file.

19 Do you want me to keep going?

20 Q. I would like you to list what you believe
21 is in his personnel file, yes.

22 A. Okay. Then I won't go to the titty bar
23 conversation he had with one of my clients.

24 There was the matter of the forged offer
25 letter from GIS Web Tech that at one point Mr. Lombardo

1 said there were two letters from GIS Web Tech, and I
2 think in Mr. Lombardo's mind he meant the one that he
3 forged and the original. Discussions around that, and
4 the time that it took, and the transaction costs to get
5 him to admit that he forged the letter was incredible.
6 That is in his personnel file.

7 The amended offer letter to him to take out
8 the merit increase clause was in his personnel file.
9 His separation notice was in his personnel file.
10 His --

11 Q. I am going to stop you.

12 A. Okay.

13 Q. With respect to the amended offer letter,
14 did that have anything to do with a warning given to
15 Mr. Lombardo?

16 A. Eli was his supervisor. I can't speak to
17 that.

18 Q. Well, you were designated as the corporate
19 representative to speak on it, so to your knowledge,
20 was the amended offer letter in any way related to a
21 warning given to Mr. Lombardo?

22 A. Yes.

23 Q. And what warning was that?

24 A. It had to do with his employee agreement.
25 He violated his employee agreement, which you recall,

1 is the Non-Solicitation, Non-Compete, Non-Disclosure
2 Form.

3 Q. And that transpired into an amended offer
4 letter, if I am understanding correctly?

5 A. Yes, it was Section 5 under that Paragraph
6 1. We talked about this last week, Christine.

7 Q. I am going to show you the amended offer
8 letter here. Let me pull it up.

9 - - - - -

10 (Previously Marked Deposition Exhibit
11 G, Copy of Letter Dated 3/28/2019 to
12 Mr. Lombardo, was shown to the
13 witness.)

14 - - - - -

15 MS. COOPER: I will give you control.
16 Heidi, there are two names, John Chmura, and then there
17 is you. I don't know if the computer misnamed. Should
18 I give control to you?

19 MS. SIEGMUND: Yes, you can give it to me.

20 MS. COOPER: Okay.

21 Q. If you can take a look at this document.

22 MS. SIEGMUND: My apologies. I should have
23 mentioned at the beginning that John is sitting in as a
24 corporate representative.

25 MS. COOPER: Okay. So that is Mr. Chmura?

1 THE WITNESS: He is joining.

2 MR. JOHN CHMURA: I am here. Just to get
3 it on the record. I am here, I am just on mute.

4 MS. COOPER: Good morning, Mr. Chmura.

5 MR. JOHN CHMURA: Good morning.

6 BY MS. COOPER:

7 Q. And this is marked Exhibit G, Defendant's
8 Exhibit G. This is the amended offer letter you were
9 referring to just a moment ago, Ms. Peterson.

10 A. Yes, ma'am.

11 Q. Anywhere in this letter does it make
12 mention of any disciplinary action or warnings?

13 A. Why would we put that in an amended offer
14 letter? I am not following.

15 Q. Well, I am just simply asking, is there any
16 reference to a warning or disciplinary action?

17 A. No.

18 Q. Why did Chmura prepare this amended offer
19 letter?

20 A. Because Mr. Lombardo falsified a letter
21 from GIS Web Tech offering him certain job benefits
22 and, I think, overall, we were real tired of hearing
23 about his requests for merit increase. It happened, at
24 least, annually. And nobody consented to a merit
25 increase, not even me.

1 Q. Mr. Lombardo's original offer letter made
2 reference to annual merit increases, correct?

3 A. Yes, it did.

4 Q. Was this not Chmura's attempt to eliminate
5 that reference in the original offer letter?

6 A. No, it was not an attempt to eliminate
7 that, it was an intent to clarify what he was eligible
8 for, which is a cost of living increase. His merit is
9 in his commission.

10 Q. So does this have anything to do with
11 Mr. Lombardo, with a performance warning?

12 MS. SIEGMUND: Objection. Asked and
13 answered.

14 A. I can answer it. I mean, I think we had
15 reached a point with Mr. Lombardo's behavior that we
16 had to clarify why we didn't fire him in March of 2019.

17 Q. So was deleting the reference to annual
18 merit increase a punishment for -- or disciplinary
19 actions?

20 A. No, it was just clarifying.

21 Q. Okay. So the amended offer letter is in
22 Mr. Lombardo's personnel file, correct?

23 A. Yes.

24 Q. Is it fair to say that the amended offer
25 letter was not related to any disciplinary action taken

1 by Chmura?

2 MS. SIEGMUND: Same objection.

3 A. I don't know what you mean in this
4 situation.

5 Q. I guess I am failing to understand how
6 amending Mr. Lombardo's offer letter in any way relates
7 to a warning or disciplinary action that Chmura
8 instituted against Mr. Lombardo. I am not -- and if
9 you can explain that to me, that would be appreciated.

10 A. So Mr. Lombardo came to his annual review
11 with a falsified offer letter from GIS Web Tech that we
12 had been in strategic partnership conversations with,
13 and Mr. Lombardo threw a wrench into the middle of that
14 relationship, which translates into revenue losses in
15 future years. I think you have been through the
16 present value conversation many times with this topic,
17 so I don't have to give you that definition.

18 But as a result of that, that relationship
19 has never really been repaired. And so the falsified
20 document precipitated the amended offer letter, so that
21 he would stop hounding us for merit increases.

22 Q. How does merit increases -- okay. So I am
23 still not seeing the connection, but --

24 A. So we went from a request for annual merit
25 increase to providing cost of living increases. So

1 Mr. Lombardo benefitted from this letter.

2 Q. At the time that Mr. Lombardo signed this
3 amended offer letter, did his base of compensation
4 change?

5 A. He got a cost of living increase.

6 Q. How much was that cost of living increase?

7 A. It is CPI, so I don't know what CPI was
8 last year.

9 Q. Sorry. Can you say that again? I just
10 missed it.

11 A. The cost of living is based on CPI.

12 Q. So my question --

13 A. It is a cost of living -- it is a cost of
14 living increase that is built in.

15 Q. Okay, I am following that, but what was the
16 specific cost of living increase Mr. Lombardo received
17 in --

18 A. I don't remember what CPI was.

19 Q. And was the increase for cost of living
20 provided concurrently with the signing of this amended
21 offer letter?

22 MS. SIEGMUND: Object to the form of the
23 question. You can answer.

24 A. I think you have to ask Sharon Simmons
25 that. I don't know.

1 Q. I am going to show you a couple of
2 documents here.

3 A. Okay.

4 - - - - -

5 (Thereupon, Deposition Exhibit I, Copy
6 of Handwritten Notes, was marked for
7 purposes of identification.)

8 - - - - -

9 Q. I am going to give you an opportunity to
10 take a look at those.

11 A. I am familiar with it.

12 Q. Okay. What is this document?

13 A. So in March of 2019, after Mr. Lombardo's
14 falsified offer letter from G.I. Web Tech was presented
15 at his annual review, Chris Chmura and myself traveled
16 to Cleveland to confront Mr. Lombardo about this
17 situation. My intention was to fire him. I spent
18 about an hour and a half with Mr. Lombardo getting him
19 to admit that he just used the situation with GIS Web
20 Tech to get a raise.

21 Q. Who was present in that meeting?

22 A. John Chmura, Chris Chmura, Greg Chmura and
23 Sharon Simmons was on the phone.

24 Q. Prior to coming up to Cleveland for that
25 meeting from Richmond, did you have a phone call with

1 Mr. Lombardo?

2 A. I did, and prior to what he said in his
3 deposition, we did not reach any kind of closure in
4 that 10 minute phone call. So he falsified his
5 statement.

6 Q. When you say you didn't reach any closure,
7 what do you mean?

8 A. I could not get him to admit that he
9 falsified the offer letter.

10 Q. What do you recall of that conversation?

11 A. I asked him if he falsified this document.
12 He said, no, it was a legitimate offer letter, and he
13 just used it to try to get a raise. It was legitimate
14 and it was a sincere offer letter.

15 Q. Now, do you understand that GIS actually
16 did offer him a position?

17 A. Yes, I had a lengthy conversation with my
18 strategic partner at GIS.

19 Q. Who initiated those conversations?

20 A. I did.

21 Q. And what did you say in those
22 conversations?

23 A. I asked if they made Mr. Lombardo an offer
24 letter dated the end of December and they said, no,
25 they made an offer letter in October, and they had

1 rescinded the offer letter. And then they sent me the
2 offer letter. So I went to Cleveland with everything I
3 needed to fire Mr. Lombardo.

4 Q. Why didn't you fire him?

5 A. Because I said he is a bad boy, but he is
6 my bad boy and I am going to help him.

7 Q. What did you mean by that?

8 A. He is a problem. He is an ethical problem.
9 He is has no moral fiber, no moral backbone.

10 He will say and do anything to get what he
11 wants, and those characteristics make him very good as
12 an A player. So as I said earlier, you have to
13 overlook things when you have an A player when you
14 shouldn't. I should have fired him in March.

15 Q. Well, turning back to Exhibit I,
16 Defendant's Exhibit I, there seems to be two different
17 handwriting on this document; is that right?

18 A. Yes.

19 Q. Who -- if you could, just go line by line
20 and tell me whose handwriting is whose.

21 A. Sure. Number one is me. Number two is me.
22 And when I decided, internally, I wasn't going to fire
23 him -- he finally admitted that he did falsify the
24 letter, we got to the hour and a half mark, and I asked
25 him to write 3, 4, and 5. Those are my words, and he

1 wrote them. I asked him to sign this document. I
2 realize it is not dated.

3 Q. And it is a little hard to see, but your
4 signature is on this document, correct?

5 A. Yes. So is Mr. Lombardo.

6 Q. His is underneath yours, correct?

7 A. Yes.

8 Q. If you can, go back up on that.

9 A. (Indicating).

10 Q. It says, "Just used the situation, GIS Web
11 Tech." What does that refer to?

12 A. That was what Mr. Lombardo said.

13 Q. What is, "I don't want to go anywhere"?

14 A. That was Mr. Lombardo saying he wanted to
15 work for Chmura.

16 Q. Were those Mr. Lombardo's words or your
17 words?

18 A. Those were Mr. Lombardo's words.

19 Q. And number 3, 4 and 5 -- sorry. Go ahead.

20 A. I was going to clarify, 3, 4 and 5 are my
21 words.

22 Q. Okay. Understood. And what did you mean
23 by, "Do the right thing every day"?

24 A. I used to say that to my children.

25 Q. Okay. Number 5, I think, says, tell me if

1 I am wrong, "Approach GIS Web Tech and take
2 responsibility for my action with the offer letter."
3 What was meant by that?

4 A. I wanted him to repair the damage he had
5 done.

6 Q. So what did you ask him to do?

7 A. Apologize and accept the fact that he
8 falsified their document.

9 Q. Who was he supposed to apologize to?

10 A. Ron Bertasi.

11 Q. And he is at GIS WebTech; is that right?

12 A. Yeah, it is a small shop. There's only
13 three of them.

14 Q. And did Mr. Lombardo call them to
15 apologize?

16 A. I never got any information back on that.

17 Q. You weren't present during any
18 conversation, though; is that fair?

19 A. No, no.

20 Q. I am going to show you what's been marked
21 as Defendant's Exhibit R. Take a minute to take a look
22 at it.

23 - - - - -

24 (Thereupon, Deposition Exhibit R, Copy
25 of Email Dated 8/31/2017 Bates Labeled

1 CHMURA000083-88, was marked for
2 purposes of identification.)

3 - - - - -

4 A. (Reviewing.)

5 Okay. Thanks.

6 Q. Do you recognize this document?

7 A. Yes, ma'am.

8 Q. And what is it?

9 A. It is an email between Rick and the people
10 that -- transaction costs related to incorrect expense
11 report, reimbursable.

12 Q. And this was an email string between you
13 and Mr. Lombardo as well as Christine Steigmann and --

14 A. Steigmann.

15 Q. This is an email correspondence between
16 you, Mr. Lombardo and Ms. Steigmann, correct?

17 A. If you scroll back up, I do believe that
18 Greg and Kyle were on there.

19 Q. And Greg and Kyle, as well, were cc'd
20 towards the top.

21 A. And the date is August 25, 2017. And Kyle
22 was his direct supervisor.

23 Q. And on Page 5 of the 6 pages, I think at
24 the bottom it says Mr. Lombardo is submitting an
25 expense report to Ms. Steigmann, correct?

1 A. Yes.

2 MS. SIEGMUND: I think it is faster if you
3 go. I have a lag on my screen.

4 MS. COOPER: Okay. Not a problem.

5 Q. All right. And this is Mr. Lombardo
6 submitting an expense report to Ms. Steigmann and to
7 you as well?

8 A. Yeah.

9 Q. Did you review all expense reports for the
10 account managers and senior account managers?

11 A. Yes.

12 Q. And can you tell me what Ms. Steigmann's
13 position was?

14 A. Finance manager.

15 Q. Is she still with the company?

16 A. She is not.

17 Q. And you wrote back to Mr. Lombardo in
18 response that "the hotel was pretty pricey, was that
19 the conference rate." Do you see that?

20 A. Yes, ma'am.

21 Q. And then he provided an explanation,
22 correct?

23 A. Yes, he did.

24 Q. Do you know if prior to booking his hotel
25 room, Mr. Lombardo would have sought approval from

1 anyone?

2 A. 2017? He would have gone through Christine
3 at that point.

4 Q. Okay.

5 A. And now it's -- that's Sharon.

6 Q. And if I scroll up here a little further,
7 we are on Page 3 of the 6 pages. This is an email, I
8 believe, sent from -- your name carries on to Page 3
9 here, but it comes from Leslie Peterson to Rick
10 Lombardo and other copies on this email, Chris Chmura,
11 Kyle West, Ms. Steigmann, Greg Chmura.

12 Can you read this email and tell me what
13 time -- you bring up issues with alcohol charges. And
14 can you tell me a little more about that and why it was
15 a concern?

16 A. Our policy on alcohol is that you have
17 alcohol only at a meal, and only if the client orders
18 alcohol first, then you may order alcohol with that
19 client.

20 Q. And were you responsible for helping
21 prepare that company policy?

22 A. I basically borrowed that policy from
23 Eastman Kodak.

24 Q. And why was that the policy of the company?

25 A. We want our business transactions to be

1 sober.

2 Q. But the company was okay with an alcoholic
3 beverage at dinner, with food, I guess I should say; is
4 that correct?

5 A. Yes, ma'am.

6 Q. What if a client asks an account manager to
7 go out for a drink and talk business? What was an
8 account manager required to do under those
9 circumstances?

10 A. Not go out for drinks. Go out for dinner.

11 Q. What if the account -- or, what if the
12 potential client didn't have time for dinner?

13 A. Then they didn't have time for alcohol. Or
14 she.

15 Q. Do you attend these conferences that
16 account managers attend?

17 A. Some of them.

18 Q. And when you are at those conferences, do
19 you see other attendees in the restaurant bar -- or,
20 I'm sorry -- in the hotel bar?

21 A. No.

22 Q. None?

23 A. I don't go to hotel bars.

24 Q. Okay. Do you ever walk past the hotel bar
25 to get to your room or to the conference rooms?

1 A. Oh, yeah, the bars in conferences are wide
2 open. You can see everybody that's in there.

3 Q. And have you observed anything at these
4 conferences with respect to the people in these bars?

5 MS. SIEGMUND: Object to the form of the
6 question.

7 A. I have. Of course I have.

8 Q. And have you ever observed any attendees in
9 the bar, in the hotel bars?

10 A. Yeah, I have. I have seen them coming out.

11 Q. Okay. Is it your understanding that --
12 well, let me rephrase. At these conferences, there is
13 a lot of opportunity, or there is opportunity to
14 interface with potential clients, or existing clients,
15 correct?

16 A. That's the reason we go.

17 Q. And isn't some of that interaction in these
18 hotel bars?

19 A. We have our own policies and standards. We
20 don't conform to the status quo of the masses.

21 Q. Okay. This email references Laura Leigh.
22 Who is Laura Leigh?

23 A. Laura Leigh Savage. Previous employee,
24 director of operations.

25 Q. And you reference -- you say, "Below is the

1 policy on entertainment you signed with Laura Leigh".

2 Where would that policy be found?

3 A. Onstage.

4 Q. Was it a separate policy from the employee
5 handbook?

6 A. No, it was in the employee handbook.

7 Q. And Mr. Lombardo, he provided -- if we
8 scroll up -- an explanation to you, correct?

9 A. Are you referencing the email I am looking
10 at?

11 Q. Yes. And if you want me to scroll down, or
12 you want to scroll down, either way.

13 A. (Reviewing.)

14 Okay.

15 Q. Mr. Lombardo provided an explanation to
16 you, correct?

17 A. Of course.

18 Q. Did Chmura ultimately reimburse him for the
19 beverages that he purchased for himself and his client?

20 A. I don't remember.

21 Q. Or clients?

22 A. I would hope not.

23 Q. Do you know whether Mr. Lombardo asked his
24 supervisor, Mr. West at the time, before he took the
25 client out as to whether he could take that client out?

1 A. Is that supposed to be separate from our
2 policy? I don't know. I don't know if he did or not,
3 but we have a policy, so he was bound to that policy.

4 Q. And I believe this occurred, based on the
5 email, in 2017. Do you have a copy of the employee
6 handbook as it stood in 2017?

7 A. I was told not to bring anything to this
8 deposition.

9 Q. I don't mean right now. Does the company
10 have a copy of the policy that was in effect at the
11 time of this email?

12 A. Yes.

13 Q. Do you know if it was produced in
14 Discovery?

15 A. I think it was, yes.

16 Q. I will represent to you that I have a copy
17 of -- that I can show you Exhibit Q, the July 19, 2019
18 employee handbook. I will pull that up. But that is
19 the only handbook I was able to find in the production.

20 - - - - -

21 (Previously Marked Deposition Exhibit
22 Q, Copy of Employee Handbook, was
23 shown to the witness.)

24 - - - - -

25 A. It think we are talking about 2017, and you

1 are asking me to look at something that's for 2019, and
2 I am focused on 2017, so why are you asking me to look
3 at something that could have evolved?

4 Q. Just take a look at this exhibit. This is
5 Defendant's Exhibit Q.

6 MS. SIEGMUND: Christine, I will note that,
7 of course, Dr. Chmura was asked on the handbook and on
8 the training on the handbook, so to the extent we are
9 getting into that, that's fine, but --

10 A. Yeah, I did not prepare for this. I did not
11 prepare for this.

12 Q. But you did prepare to testify regarding
13 the disciplinary actions taken against Mr. Lombardo,
14 and you have testified that there was a company policy
15 that was -- that Mr. Lombardo did not adhere to when he
16 bought company drinks. So I am going to ask you to
17 take a look at this exhibit, Exhibit Q.

18 MS. SIEGMUND: Christine, can we go off the
19 record for one second?

20 MS. COOPER: Yes.

21 - - - - -

22 (Discussion had off the record.)

23 - - - - -

24 MS. SIEGMUND: Is there a particular page
25 you would like me to go to that would speed this up a

1 little bit?

2 MS. COOPER: Well, I want her to be
3 familiar with the document, but we are going to look at
4 Page 5 -- well, really, Page 6.

5 BY MS. COOPER:

6 Q. Do you recognize this document,
7 Ms. Peterson?

8 A. Yes, ma'am.

9 Q. And what is it?

10 A. It's an employee handbook.

11 Q. And it is the employee handbook that was
12 put in place as of July 19, 2019; is that correct?

13 A. I don't know. I have to go back to the
14 top.

15 Q. Can you see the date on there,
16 July 19, 2019?

17 A. I can.

18 Q. I am going to take you to Page 6. Do you
19 see the entertainment section in the handbook?

20 A. Okay. This is about picking out a
21 restaurant for dinner and having alcohol, yes.

22 Q. Is this the policy you were referring to --
23 well, let me ask this: Has this policy changed between
24 2017, the date of the email that we were just looking
25 at, and 2019? Are you aware of any changes to this

1 part of the employee handbook?

2 A. Does it end on Page 6? (Reviewing).

3 Yes, that's the same policy.

4 Q. Is this the policy you were pointing
5 Mr. Lombardo to in your email?

6 A. Yes, ma'am.

7 Q. Is there any part of the employee handbook
8 -- let me ask this, does this provision in the handbook
9 prevent an employee from taking a client out to -- for
10 a drink at a bar or -- let me stop there.

11 A. I don't see the word, bar, in that
12 paragraph.

13 Q. Does it prevent an account manager, or
14 senior account manager, from having a drink with a
15 client or potential client?

16 A. No.

17 Q. Is there any part of the employee handbook,
18 to your knowledge as it existed in 2017, that prevented
19 an account manager or senior account manager from
20 having a drink with a client or potential client?

21 A. If in a restaurant and the client orders
22 alcohol, then the account manager can certainly follow
23 suit.

24 Q. Is there anything preventing them or
25 barring them from having a drink with a client if it is

1 not at a restaurant over dinner?

2 A. It is not stated that way.

3 Q. Other than the email we just looked at and
4 the handwritten sheet of paper that we looked at a
5 moment ago, are there any other written documents, to
6 your knowledge, in Mr. Lombardo's personnel file that
7 pertain to any disciplinary actions or warning -- and
8 the offer letter. I'm sorry, the amended offer letter
9 from your testimony. Let me restate my question.

10 MS. SIEGMUND: Yeah, I got lost. I'm
11 sorry.

12 Q. In the amended offer letter, Exhibit I,
13 which is the handwritten document we went over, and
14 Exhibit R, which is the email, are you aware of any
15 other written documentations pertaining to any warnings
16 or disciplinary action with respect to Mr. Lombardo in
17 his personnel file?

18 A. In 2016, the annual review was conducted
19 between Mr. Lombardo and Laura Leigh Savage, Leslie
20 Peterson, and there were some, continues improvement
21 suggestions around his ethical and moral behavior that
22 were documented and handed off to, I believe that was,
23 Christine Steigmann at the time.

24 Q. And are you aware of whether those are
25 still in Mr. Lombardo's personnel file?

1 A. I'm not. We are not allowed to really see
2 personnel files. That's just within H.R.

3 Q. So your -- you don't have access to the
4 personnel files?

5 A. We don't access personnel files. That's
6 within the control of H.R.

7 Q. But you would have access to it if you
8 wanted to see them; is that fair? Let me ask you, are
9 you prohibited from looking at the personnel files?

10 A. I don't know. I don't think so, but I
11 don't know. I don't look at people's personnel files.

12 Q. Did you look at Mr. Lombardo's personnel
13 files to prepare for this deposition?

14 A. I did not.

15 Q. Then how can you testify regarding what's
16 contained -- what warnings -- let me rephrase that.

17 What disciplinary action, if any, was taken
18 against Mr. Lombardo during his tenure there?

19 A. Life coaching.

20 Q. Can you explain what you mean by that?

21 A. Do you play sports?

22 Q. I did, yes.

23 A. You look like an athlete.

24 So the role of the coach is to continuously
25 improve the players in order to win games. As his

1 coach, I was continuously working on his behavior to
2 make -- help him become a better player. If you see
3 that as disciplinary, I see it as disciplinary. If you
4 see it as coaching, then it is coaching.

5 Q. Other than coaching, is there any other
6 disciplinary action that Chmura took?

7 A. No.

8 Q. We are going to change topics
9 substantially, so if we want to take a short break now
10 or keep moving forward, I just want to be flexible to
11 that. Now would be good time if anybody needs a break.

12 MS. SIEGMUND: You want to keep going?

13 THE WITNESS: Okay.

14 Q. Okay. I am going to turn your attention to
15 Topic Number 25 on Exhibit A, "Calculation of
16 commissions paid to Mr. Lombardo." You are the
17 designated corporate representative to testify on this
18 topic, correct?

19 A. Yes, ma'am.

20 Q. I am going to put up two documents,
21 Defendant's Deposition Exhibit J and K.

22 - - - - -

23 (Thereupon, Deposition Exhibit J, Copy
24 of Richard Lombardo Commission Report
25 10-16 to 02-17, Bates CHMURA000131,

1 was marked for purposes of
2 identification.)

3 - - - - -

4 - - - - -

5 (Thereupon, Deposition Exhibit K, Copy
6 of Richard Lombardo Sales Commission,
7 Bates CHMURA000132, was marked for
8 purposes of identification.)

9 - - - - -

10 Q. I am going to give you control.

11 A. What does, produced natively, mean?

12 MS. SIEGMUND: That just means we produced
13 it as an Excel spreadsheet and so there is a place
14 holder in our production, so it doesn't have a Bates
15 number at the bottom.

16 THE WITNESS: Okay.

17 Q. If you can, go ahead and scroll through
18 Exhibit J, and scroll through Exhibit K and familiarize
19 yourself with these.

20 A. (Reviewing.)

21 Q. Are you ready?

22 A. Yes, ma'am.

23 Q. Okay. Turning to Exhibit J first. Do you
24 recognize this document?

25 A. It looks like a commission report.

1 Q. And do you know when this commission report
2 was assembled?

3 A. That's evolved over time. What time period
4 do you want me to speak to?

5 Q. Well, I mean, this specific document. Do
6 you know how this specific document was put together?

7 A. 2016? That would have been Ms. Steigmann
8 individually reaching out to the account managers and
9 preparing what she had on the books as their
10 commissions. They reviewed it, edited it, pushed it
11 back to Christine Steigmann who recorded those edits,
12 and then pushed it to me to review.

13 Q. Does Exhibit J accurately reflect the
14 commissions that is Mr. Lombardo was paid from October
15 2015 through February 2017?

16 A. I can't remember that. If this is an
17 approved expenditure or commission report, then I would
18 have to say, yeah.

19 Q. Who, ultimately, approved the amount of
20 commissions that would be paid during this time period,
21 October 2015 to February 2017?

22 A. Me.

23 Q. And if we can go up, I am going to take us
24 up to just the first page up here (indicating), and
25 shrink it a little bit. If it gets too small, tell me.

1 Is that still clear?

2 A. Can you move the Type column to the left,
3 my left, so I can see the comments on the right, or is
4 this a scanned document?

5 Q. This is a PDF version of the excel
6 spreadsheet that was produced.

7 A. Well, without comments on the right, I'm
8 not familiar, but I will do my best.

9 Q. Do you believe there were comments on this
10 particular spreadsheet of the February --

11 A. I am used to seeing comments on the right,
12 yes, ma'am.

13 Q. Okay. Give me one moment here. See if we
14 can do it this way (indicating).

15 MS. COOPER: Let's go off the record.

16 - - - - -

17 (Short recess taken).

18 - - - - -

19 (Thereupon, Deposition Exhibit AG ,
20 Copy of Excel/Native Version of Exhibit
21 J, Placeholder, CHMURA000131, was
22 marked for purposes of identification.)

23 - - - - -

24 BY MS. COOPER:

25 Q. Okay. I am going to give you control of

1 this. I will represent to you this is the native
2 version, or Excel version of what I had marked as
3 Defendants Exhibit J. This one is marked as
4 Defendant's Exhibit AG, and the place holder is Chmura
5 000131. And I will give you an opportunity to
6 manipulate this and take a look at it.

7 A. (Reviewing.)

8 If you could move to the left, Row A and
9 then freeze B --

10 Q. Do you want me to freeze Row B?

11 MS. SIEGMUND: Yes.

12 A. Yes, I want to see the name as we scroll
13 across.

14 Q. (Indicating). Okay. You should be able to
15 now.

16 A. Okay.

17 Q. Do you recognize this document?

18 A. Yes, ma'am.

19 Q. What is it?

20 A. It looks like Commission Report from
21 November 2016.

22 Q. And did you prepare this report?

23 A. No.

24 Q. To the best of your knowledge, is that a
25 true and accurate copy of the 2016 commission report?

1 A. To the best of my knowledge, yes.

2 Q. And there are some other tabs at the
3 bottom. There is February 2017, January 2017, December
4 2016, November 2016, October 2016, direct?

5 A. Correct.

6 Q. And do you want to page through those and
7 tell me if those are also accurate to the best of your
8 knowledge?

9 A. (Reviewing.)

10 Looks accurate.

11 Q. Do you know who prepared this spreadsheet?

12 A. Christine Steigmann.

13 Q. And how was this -- how would the
14 information get on to this spreadsheet?

15 A. Sure. As I said earlier, Christine
16 Steigmann would start on the month of commissions and
17 put in front of each account manager what was on the
18 books, and then any corrections that needed to be made,
19 the account managers worked with Christine on that
20 until they got it to where they felt like it was right,
21 and then it came to me.

22 Q. And then what would you do once it came to
23 you?

24 A. I would review each transaction, and if I
25 had a question, I would go direct to the account

1 manager or senior account manager and seek
2 clarification if it wasn't properly noted in the
3 comment section, row -- Column K.

4 Q. Would you ever make adjustments to the
5 commission percentages?

6 A. No.

7 Q. Would you make adjustments to the
8 commission dollar amount?

9 A. No.

10 Q. Who would do that?

11 A. Christine Steigmann.

12 Q. Would she do that at your direction?

13 A. Yes.

14 Q. Now, what were the -- take the November '16
15 tab you were on on Exhibit AG, are these the
16 commissions for Mr. Lombardo?

17 A. Yes, it says RL, Column G.

18 Q. Let's walk through them. I am going to
19 take us up so we can see the header here. Walk through
20 the columns with me. So it has, Opportunity Name. Can
21 you explain what that column is?

22 A. The opportunity is the language that's used
23 in Salesforce to be tied with a client's name.

24 Q. And the Type, can you explain what -- I
25 missed one. If we go to -- well, let's finish this up

1 first. The Commission, can you explain to me the
2 Commission column?

3 A. Oh, there's Type. Should we do Type since
4 we are here?

5 Q. Yes, please.

6 A. It would be either new business or it would
7 be a contract that was a renewal -- license that was
8 renewing.

9 Q. And what's the amount next to it?

10 A. The amount next to it, if it's a renewal,
11 represents 3% of that opportunity.

12 Q. So if we look at, once you get back to the
13 top there, Column C says, Amount. What was that
14 amount?

15 A. If it says renewal, it is 3% of -- that is
16 the amount of the contract, excuse me, yes.

17 Q. And the next column is -- yeah, the next
18 column is really Columns C and E combined, says
19 Commission. And the first column there of the
20 commission has the percentage in it. What did that
21 percentage represent?

22 A. If it is a renewal, it is 3% of the amount.
23 If it is new business, it is 15% of the amount with
24 certain caveats.

25 Q. And the dollar value next to the percentage

1 amount, what does that represent?

2 A. The commission --

3 Q. On the right hand side. Let me rephrase
4 that so that this is clear for the record.

5 To the right-hand side under the Commission
6 Column, there is a dollar value next to the percentage.
7 What does that represent?

8 A. Commission.

9 Q. And then there is a Renewal Date column.
10 What is the Renewal Date column?

11 A. That is the date that the license agreement
12 renewed.

13 Q. And then there is a Column H that says --
14 I'm sorry, Opportunity Owner is Column G and it has
15 some initials there, RL. What is an Opportunity Owner?

16 A. That's just the designated account manager.

17 Q. So in this instance, R L would stand for
18 Richard Lombardo, correct?

19 A. Yes.

20 Q. And then Column H says Demo, question mark.
21 What is that column?

22 A. That says who did the demo.

23 Q. And if it has an NA in that column, do you
24 know what that means?

25 A. Typically N A means, not applicable.

1 Q. So, for example, in the row that you are
2 in, in Row 5, it was a renewal, and so it has an N A in
3 Demo. I take it there wouldn't usually be a demo for a
4 renewal; is that fair?

5 A. Yeah, absolutely.

6 Q. And then Column I says, Survey Sent,
7 question mark. What survey is that column referring
8 to?

9 A. Customer satisfaction survey.

10 Q. And there are dates in there, so did that
11 represent the date that the survey was sent?

12 A. That's what the header says in Column I.

13 Q. And if there is an N A in the field
14 underneath that column, what did that N A stand for?

15 A. Typically N A means not applicable.

16 Q. And then there is a Note column, Column J,
17 correct? It doesn't look like there is any note --

18 A. Yes.

19 Q. I'm sorry, I broke my own rules.

20 It doesn't look like there are any notes in
21 this particular one, but what type of notes would there
22 be in that field?

23 A. Any information that was needed to clarify
24 any of the previous columns to Column J.

25 Q. And then Column K says Paid, question mark.

1 What is that column?

2 A. That indicates the date that we received
3 payment for that license agreement from that
4 Opportunity Name.

5 Q. So it doesn't refer to the date that the
6 account manager may receive the commission in their
7 pay, correct?

8 A. Correct.

9 Q. And so if we look at Row 9 and 10 on the
10 November 5, 2016 tab of Exhibit AG, there is a yellow
11 dot in K with no date in it. Does that mean that the
12 commission -- sorry, that the contract had not been
13 paid by the client at that point?

14 A. I used to get these from Christine, and it
15 looked like an artifact to me.

16 Q. But if there is no date in that column,
17 then what your understanding would be is that that
18 client hadn't paid that commission yet -- not the
19 commission -- hadn't paid on the contract yet, correct?

20 A. If there is not a date in there, then we
21 are still waiting on payment.

22 Q. Okay. Continue.

23 A. And at that point, we went ahead and paid
24 whether we had been paid or not.

25 Q. At some point, that changed, correct, how

1 the commission was paid, the timing of the payment of
2 commissions was changed, correct?

3 A. Yes.

4 Q. And can you explain what change was made?

5 A. We paid commissions when we received
6 payment from the client.

7 Q. When Mr. Lombardo first started working for
8 Chmura, what percent was paid on -- well, let me
9 rephrase that.

10 What constituted new business? What would
11 be included in new business?

12 A. It was a new opportunity.

13 Q. And how was that defined?

14 A. I'm sorry? How was that defined?

15 Q. Yes.

16 A. New business means that it is a new client.

17 Q. Do you know if there are records for the
18 commissions paid to Mr. Lombardo in 2015?

19 A. Sorry, could you restate that? You were
20 turning your head and I couldn't hear you.

21 Q. I'm sorry. Yes, absolutely. I said, are
22 you aware of whether there are any records for
23 commissions paid to Mr. Lombardo in 2015?

24 A. There would be records in QuickBooks.

25 Q. And do you know if those were produced, his

1 commission records were produced in Discovery?

2 A. I do not. In 2015?

3 Q. Yes.

4 A. I do not.

5 Q. Do you know when the change was made on the
6 time of commission payments?

7 A. In early 2019.

8 Q. I am going to show you what's been marked
9 as Exhibit AH. It is another spreadsheet.

10 - - - - -

11 (Thereupon, Deposition Exhibit AH, Copy
12 of Excel Spreadsheet for March 2017
13 through September 2019, was marked for
14 purposes of identification.)

15 - - - - -

16 Q. If you can take a look at this.

17 A. (Reviewing.)

18 That was an interim, yep. We were getting
19 into situations where clients weren't paying and we
20 paid out commissions, and we had to have fiduciary
21 responsibility within the account managers to earn
22 their renewal. So they needed to track down those past
23 due notices, and that's what that Row 1 is about.

24 Q. Do you recognize this spreadsheet?

25 A. Yes, ma'am.

1 Q. And what is it?

2 A. It appears to be a commission report.

3 Q. It goes from March of 2017 through
4 September of 2019, correct?

5 A. That's what the tabs indicate at the
6 bottom.

7 Q. And these are Mr. Lombardo's -- pertain to
8 Mr. Lombardo's opportunities, correct?

9 A. I am used to seeing all of them together,
10 so if this is a commission report, it should have
11 everybody in there, not just Mr. Lombardo.

12 Q. Well, does this one contain everybody as
13 you look through it?

14 A. Well, I can only see Rows 1 through 19.
15 This appears to be something that was prepared in
16 production for this case, so I would not say it was --
17 no.

18 Q. Did you prepare it?

19 A. No.

20 Q. Do you know who did prepare it?

21 A. Sharon Simmons most likely, or Hannah
22 Whisenant.

23 Q. Did you review it for your deposition
24 today?

25 A. I did not.

1 Q. I am going to show you the first
2 spreadsheet here and ask you a few questions on it.
3 You will see on Row 18, this is tab March 7, 2017 of
4 Exhibit AH, and if you look at Row 18, in the
5 Commission column --

6 A. Do you mind highlighting that for me, put
7 your cursor on it?

8 Q. Sure.

9 A. I have a little bit of astigmatism.

10 Q. In the Commission Percent column, you see a
11 7.5%?

12 A. Uh-huh.

13 Q. Why is it 7.5 and not either 15 or -- well,
14 let me take a step back. Row 18 shows the type, New
15 Business, correct?

16 A. Yes, ma'am.

17 Q. And it shows in the Commission column, the
18 7.5 %, correct?

19 A. It does.

20 Q. And why would that be at a 7.5% versus a
21 15%?

22 A. In March of 2017, that would have been Kyle
23 West in the supervisory role, and more than likely --
24 it says in Column J that Rick and Austen worked on this
25 together, so they split the commission.

1 Q. So was that common, then, that splitting
2 commission if two account managers worked on an
3 opportunity together?

4 A. Is your use of the word common, frequent?
5 Or is your use of the word common, a policy manner?

6 Q. Let me rephrase that. Thank you.

7 Was it policy to split the commission if
8 more than one account manager worked on an opportunity?

9 A. Absolutely. They worked as a team. Those
10 are the two meteorites working together on that one.

11 Q. Did they -- well, who decided the split on
12 the commission if two account managers worked on an
13 opportunity together?

14 A. I probably did.

15 Q. Would you ultimately approve it or not?

16 A. Absolutely. Absolutely.

17 Q. How were -- if, for example, there was new
18 business that signed a multi-year contract and paid
19 that multi-year contract upfront, how were commissions
20 calculated on that basis?

21 A. So let me give you that in a why response
22 and not a how, is that okay?

23 Q. You can give me whatever response you give
24 me and I will listen to you and follow up.

25 A. Okay. So would you restate the question?

1 You want to know how multi-year deals were handled in
2 terms of commissions when the entire multi-year deal
3 was paid in year X?

4 Q. Correct.

5 A. Because the client, particularly the B to B
6 client, can cancel at any time, there is not a
7 guaranteed 3% deal. Now, if they pay upfront, we still
8 have to get those renewals, right? Which means if you
9 get 15% commission, you really need to follow-up with
10 those touch points every quarter, you can kind of let
11 that one slide because you already got your commission
12 for it. So to make sure those touch points that were
13 required for renewal, you have to make sure that you
14 take a 12 month commission and a 3% renewal thereafter.

15 Q. Was it standard policy at Chmura for
16 account managers and senior account managers to not
17 have any touch points with a client that signed a
18 multi-year -- signed and paid a multi-year contract?

19 A. Okay, so it is Chmura, not Shmura, if you
20 don't mind. Dr. Chen, Chmura.

21 At Chmura, we did everything we could to
22 incentivize our account managers to take care of our
23 client. So rather than pay 15% upfront, we pay 15%,
24 renewal, renewal. 15%, renewal, renewal, renewal.
25 Depending on the terms. But you wanted that client to

1 renew.

2 Did I answer your question? Was it a
3 standard practice question or policy question?

4 Q. Was the standard policy on a contract, on a
5 multi-year contract that was fully paid upfront for an
6 account manager and senior account manager to have no
7 touch points with that client after that contract was
8 paid?

9 A. No, we would never encourage no touch
10 points. That's the whole thing I just went through
11 with the 3% commission.

12 Q. Okay. Was it ever put in writing that a
13 multi-year contract, fully paid, would be paid out in
14 commissions at 15% on the first year and 3% on the
15 years thereafter?

16 A. That was recorded on the standard operating
17 procedures.

18 Q. When were those standard operating
19 procedures adopted?

20 A. Under Greg's watch in 2017.

21 Q. So what about commissions prior to the
22 standard operating procedures?

23 A. Well, generally, things go like this,
24 Christine, is you have a year and you develop Best
25 Practices, and that would have been 2015 through 2016.

1 Once you get through all the kinks of a start-up
2 department, then you organize standard operating
3 procedures based on best practices, and there is a
4 spirit of continuous improvement.

5 Q. How were -- let me ask this: Were
6 commissions paid differently on multi-year contracts in
7 2015 and 2016 than they were in 2017 going forward?

8 A. That's not to my understanding, no.

9 Q. When an account manager started at Chmura,
10 how were they paid for -- well, let me rephrase that.

11 If an account manager, let's say, inherited
12 an opportunity from a prior account manager and
13 ultimately closed the deal, how were commissions paid
14 on that deal to the new account manager?

15 A. What year are you in? When you said
16 started --

17 Q. Well, new --

18 A. And the account manager -- can you be more
19 specific about what you mean by new account manager?

20 Q. If Chmura hired a new account manager --
21 when Chmura --

22 A. When?

23 Q. In 2015. Who inherited an opportunity and
24 ultimately closed that opportunity, how were they --
25 what percentage of commission were they paid?

1 A. As we discussed last week, there were
2 practices in place that if they prospected that client,
3 they did -- they set up the demo, they actually did the
4 demo on their own without the help of an economist or
5 statistician to close that deal, they did the paperwork
6 properly in Salesforce -- the documentation, excuse
7 me -- and then they correctly reported information to
8 the Accounting Department, that constituted a complete
9 15% initial sales cycle.

10 If they inherited that, then we have to
11 look at how they inherited that, who did the demo, was
12 there supporting staff on that demo? Did they close,
13 et cetera, et cetera. So you have to be able to
14 understand the full sales cycle.

15 So if they just got a wet signature on a
16 license agreement, that's the equivalent to the level
17 of effort of a renewal, so that was 3%. If they
18 didn't --

19 Q. Did they -- I'm sorry.

20 A. No, go ahead.

21 Q. Was there ever an instance in which an
22 account manager only had to procure a signature on a
23 contract and still got paid the 15% commission between
24 2015 and today?

25 A. Not that I'm aware of.

1 Q. To your knowledge, did you ever approve the
2 commission in that instance, at 15%?

3 A. What instance of 15%, the complete sales
4 cycle?

5 Q. No, in the instance in which a contract --
6 where the demo had already been completed and the
7 contract was about to be inked, I think were your
8 words. Had you ever approved a 15% commission for an
9 account manager who inherited it in that status?

10 A. I have no recall of doing that.

11 Q. I want to turn your attention to this
12 November 2017 tab on AH. And if you look at Row 5, you
13 will see under Commission there is 5%. Can you explain
14 in this instance why a 5% commission was paid on new
15 business instead of 15%?

16 A. So this was under Greg in 2017, November of
17 2017. He took over October 1 of 2017. So let me see
18 what's in that -- are we on Row 5? Is that the one,
19 the timeline we're in?

20 Q. Yes.

21 A. Cuyahoga County? Oh, my gosh. I'll never
22 forget that one. Yeah, Cuyahoga County is the county
23 for our headquarters in Cleveland. And Cuyahoga County
24 came in to the Cleveland office, and the original demo
25 was given by Greg.

1 And the paperwork to get Cuyahoga County as
2 a new client was unbelievable. I believe that our
3 Operations Department worked on that for six months
4 before we were able to get it in. So Rick got 5% in
5 that situation because he didn't do the demo, he didn't
6 do the paperwork.

7 It falls into that 5% category of -- pretty
8 much a judgment call, but that would have been Greg's
9 call. And it was an RFP, so he wouldn't have filled
10 out the RFP. I think that's a very generous commission
11 for the level of effort that he had to do.

12 Q. Was there a written policy of reducing the
13 commission from 15% to a lesser amount if an RFP was
14 involved?

15 A. Yes, he should have an email on that from
16 me.

17 Q. Do you recall when you would have sent that
18 email?

19 A. I was the only one that sent the email, was
20 that the question?

21 Q. No, do you recall when you would have sent
22 that email?

23 A. Oh, I think it was March of 2015.

24 Q. And do you know if that email was produced
25 in Discovery?

1 A. Yes.

2 Q. Was it?

3 A. Yes.

4 Q. I am going to show you, or direct your
5 attention to the October 2017 tab on Exhibit AH. The
6 Opportunity Name is Entergy Mississippi and it has a 6%
7 commission in the Commission column. Can you explain
8 why this one has a 6% commission in that column?

9 A. That would be Greg's judgment, but I can
10 tell you when Entergy was being managed by Rob
11 McMillin, that they were a former client, and I don't
12 know the details behind this one.

13 Q. Did you approve this 6% commission?

14 A. No, that would have been Greg.

15 Q. You mentioned earlier that Greg took over.
16 What did Greg take over?

17 A. He took over Kyle's supervisory role of the
18 sales team because Kyle --

19 Q. Go ahead, you can finish your thought.
20 What did Kyle --

21 A. No, no. I just -- Kyle had other plans.

22 Q. What were Kyle's other plans?

23 A. He wanted to go to Italy with his wife.

24 Q. Okay. How long -- and Kyle is Mr. West,
25 right, Kyle West?

1 A. Yes, ma'am.

2 Q. Kyle -- how long was Mr. West in Italy for?

3 A. The month of January 2018, the month of
4 April and half of May of 2018.

5 Q. And did he come back to work in May of
6 2018?

7 A. He did.

8 Q. I am going to show you the tab so we can go
9 to a concrete example. (Indicating).

10 Okay, I froze the first column here. We
11 are on the April 2019, the April 2019 tab of Exhibit
12 AH, and I want to direct your attention to Row 11 and
13 12. I highlighted Row 11. If you could just take a
14 look at those two rows for us for a minute and tell me
15 when you are ready.

16 A. (Reviewing.)

17 Q. Are you familiar with the "Workforce
18 Solution, South Plains 3-year Agreement" opportunity?

19 A. That was a mouthful. Somewhat, yeah.

20 Q. And there is a note in this particular row
21 that states -- if you want to scroll over for a moment
22 -- "Rick was paid for all three years at the new
23 business rate. Only the 12 months should be paid at
24 that rate." Do you see that?

25 A. Yes, ma'am.

1 Q. Do you know who made that note?

2 A. It was either Sharon or Hannah.

3 Q. And we talked about how 15% commission
4 would be paid on the first year and then the 3% would
5 be paid on the remaining years on a contract that was
6 paid in full, correct? We already talked about that?

7 A. Yes, ma'am.

8 Q. Is this one of the instances in which
9 Mr. Lombardo would have been paid commission on the
10 first year at 15% and then the remaining paid at 3%?

11 A. Yes.

12 Q. Who, in this instance -- let me rephrase.
13 Did you approve payment on this one at the
14 rate of 15% for the first year and 3% for the remaining
15 years?

16 A. That would have been April '19. That would
17 have been early in Eli's tenure, so I imagine he was
18 just learning. So this probably went to Sharon after
19 Eli glanced at it.

20 He wouldn't have known enough at that time
21 to -- I mean, he may have. Talking about Eli here. So
22 I don't know about this one. I am aware that that
23 adjustment was made.

24 Q. Okay. To your knowledge, was -- we looked
25 at the spreadsheet AG, which was October 2016 to

1 February 2017. Was the spreadsheet we are looking at
2 now, AH, did it pull information from a different
3 source than spreadsheet AG?

4 A. No, everything came from QuickBooks and
5 backed up by Salesforce.

6 Q. So we talked about opportunity. We talked
7 multi-year contracts, talked about commissions when
8 more than one account manager worked on opportunities.
9 Were there any other instances in which a commission
10 would be adjusted?

11 A. No, unless there was a mistake like this
12 one appears to be a mistake.

13 Q. Well, this was -- you are talking,
14 Workforce Solutions on tab -- on the April 2019 tab,
15 correct?

16 A. Yes. Any time you see something in red
17 with a negative on it, it is an adjustment and
18 somebody's mistake.

19 Q. But this was an adjustment for a multi-year
20 paid contract, correct?

21 A. Yes, ma'am.

22 Q. I want to change topics now and close this
23 out. I am going back to Exhibit A, Notice of
24 Deposition. You were designated as the corporate
25 representative to speak about "Eli Auerbach's

1 termination, including the decision to terminate,
2 reason for termination and notice to Mr. Auerbach of
3 his termination"; is that correct?

4 A. Yes.

5 Q. When was Mr. Auerbach terminated? When was
6 his employment terminated?

7 That was a poorly worded question.

8 A. December of 2019.

9 Q. What were the circumstances surrounding his
10 employment termination?

11 A. He wasn't meshing with leadership in terms
12 of direction we wanted to go. He had a different
13 direction he wanted to take the sales team, and the
14 level of conflict that was creating for the sales team
15 wasn't necessary.

16 Q. What direction did he want to take the
17 sales team?

18 A. He wanted to, basically, raise their base
19 salary and lower their commissions, which was creating
20 anxiety for them.

21 Q. After Mr. Auerbach was terminated, did
22 Chmura make adjustments to the commission structure?

23 A. So we got kind of caught -- blindsided with
24 two new hires that came in that December, and
25 unbeknownst to us, Mr. Auerbach had designed their

1 offer letters, signed it himself, sent it out. And so
2 they came in under, here is the structure. And that
3 was never approved by leadership.

4 So we were pretty much stuck. So we had
5 some bumps there, bumps in the road. And, I mean, he
6 didn't have the the authority to sign an offer letter.

7 Q. So Mr. -- Mr. Auerbach did not have
8 authority to -- let me ask, who does have authority to
9 sign an offer letter?

10 A. Me, Sharon Simmons, Chris.

11 Q. And in these two instances, you didn't?

12 A. Can I correct my testimony? John Chmura
13 and Greg Chmura can sign for their people.

14 Q. And then, also, the others you listed can
15 sign for account managers; is that right? Ms. Simmons,
16 and was there somebody else you mentioned as well?

17 A. Chris Chmura, but I don't believe there is
18 any situation where Sharon or Chris signed. It was
19 usually me.

20 Q. And in these two instances, you didn't
21 review the offer letter before they went out to these
22 new account managers?

23 A. No, I didn't see them.

24 Q. When did you discover that these offer
25 letters had gone out in the form that they did?

1 A. When the decision was made between Eli and
2 Aisha to hire them, I got to see the letter then, and
3 it was the new sales structure that we hadn't even
4 approved.

5 Q. Were those letters already signed by the
6 new employees?

7 A. When I saw them?

8 Q. Yes.

9 A. I don't remember.

10 Q. Is the sales team currently being paid on a
11 different commission structure than was in effect when
12 Mr. Lombardo was employed?

13 A. Yes.

14 Q. And is it the structure that Mr. Auerbach
15 proposed?

16 A. Yes.

17 Q. When was that change made?

18 A. December 1, 2019.

19 Q. And was leadership involved in that
20 decision?

21 A. We had to deal with the situation of two
22 employees coming in with a different sales structure
23 than the remaining employees.

24 Q. Why was the decision made to alter the
25 existing -- alter the structures of existing employees

1 as opposed to the new employees?

2 A. Some members of leadership felt like the
3 new structure was good and that it was more manageable
4 and sustainable over time, but we shot ourselves in the
5 foot on FMLA by raising somebody from 50,000 to 60 in
6 terms of hitting that high income target.

7 Q. Prior to Mr. Auerbach's termination, did
8 Chmura have him sign an affidavit pertaining to this
9 case, Mr. Lombardo's case?

10 A. Eli was eager to sign that affidavit, yes.

11 Q. Who prepared that affidavit?

12 MS. SIEGMUND: I would object to -- or
13 instruct you not to answer to the extent that gets into
14 attorney-client communications.

15 Q. Are you not going to answer that question?

16 A. I am not.

17 Q. Let me ask this, did you prepare that
18 affidavit?

19 A. No.

20 Q. Did you review the affidavit before it was
21 provided to Mr. Auerbach?

22 A. Yes.

23 Q. And that affidavit was -- let me ask this,
24 who handed the affidavit to Mr. Auerbach for his
25 signature, if you know?

1 A. Greg Chmura.

2 Q. And Mr. Auerbach ultimately signed the
3 affidavit, correct?

4 A. Yes.

5 Q. And the date he turned that affidavit back
6 to the company, he was terminated; is that correct?

7 A. Yes.

8 Q. Who had the discussion with Mr. Auerbach
9 regarding his termination, if there was any?

10 A. Greg Chmura.

11 Q. Were you present, either by phone or in
12 person, when Mr. Auerbach was terminated?

13 A. No.

14 Q. Was leadership in agreement on terminating
15 Mr. Auerbach?

16 A. Yes.

17 Q. I am going to turn your attention back to
18 Exhibit A just for a second. I think we are on our
19 last topic here. You were designated as the
20 representative regarding Topic Number 32,
21 "Mr. Lombardo's personnel file"; is that correct?

22 A. Yes.

23 MS. SIEGMUND: I think we went through a
24 lot of this on Thursday, so, hopefully, we can fast
25 track this.

1 MS. COOPER: We did. I think I only have
2 one question on this, maybe a few, don't hold me to
3 one, but we already went through a lot today as well.

4 Q. Earlier today you testified you did not
5 review his personnel file prior to this deposition,
6 correct?

7 A. Correct.

8 Q. When was the last time you did review this
9 personnel file?

10 A. I don't know.

11 MS. COOPER: If we can just take a break
12 for a moment. I think that concludes the 30(b) portion
13 of the deposition, but I want to just page through.

14 Let's take a short break.

15 MS. SIEGMUND: Sure. Do you want to take a
16 lunch, or do you want to just do a short break and keep
17 going?

18 THE WITNESS: I want to keep going.

19 MS. SIEGMUND: Okay.

20 MS. COOPER: We're going to take five.

21 - - - - -

22 (Short recess taken).

23 - - - - -

24 BY MS. COOPER:

25 Q. I'd like to go on to the individual part of

1 this deposition and move away from the 30(b)
2 deposition. Some of the topics may sound a little
3 similar, Ms. Peterson, but I will try to ask different
4 questions, even though there is some overlapping in the
5 way the topic designation is in the Notice of
6 Deposition.

7 With respect to payment of commissions,
8 when Mr. Lombardo first started, I think you already
9 testified, that you would review and approve those
10 commissions; is that correct?

11 A. Yes.

12 Q. And when he first started with the company,
13 he was -- some of his commission rates were changed
14 based on status of opportunity provided to him; is that
15 correct?

16 A. Yes.

17 Q. Can you tell me a little more about those
18 changes in commission rates, if you recall?

19 A. Yes. I can tell you the same thing I told
20 you several times. Do you want me to go through it
21 again?

22 Q. Just as to when he first started, yes,
23 please.

24 A. So prior to Mr. Lombardo's employment, we
25 had Robert McMillin. He was -- he was more of a

1 business development person for JobsEQ, and so he had
2 gone to several conferences. He was prospecting. He
3 was getting license agreements in place, and then left.

4 And so about two months later, we had gone
5 to ComDoc and got an understanding of what a sales team
6 for technology looked like. And when Mr. Lombardo came
7 on, there were several deals amongst -- close, or even
8 closed in the case of, I believe, counties. I know
9 they had been closing them in Salesforce.

10 So we had the policy that I told you about
11 before, the total initial sales cycle for 15% starts at
12 prospecting and ends with the closed deal. If he
13 didn't hit all of the points in that process, then the
14 commission rates were calculated due to what we
15 considered level of effort.

16 Q. When did Mr -- is it McMillin? Is that
17 right?

18 A. Yes.

19 Q. When did Mr. McMillin leave the company?

20 A. November of 2014.

21 Q. And Mr. Lombardo started in February of?

22 A. February 18, 2015, yes.

23 Q. And just so it is clear, because I had a
24 hard time -- 2015 Mr. Lombardo started, correct?

25 A. Yes.

1 Q. And so some of the leads that were turned
2 over to Mr. Lombardo were leads from Mr. McMillin,
3 correct?

4 A. Leads from Chris Chmura.

5 Q. I want to focus just for a moment on the
6 leads from Mr. McMillin if we could.

7 A. Sure.

8 Q. Are they -- are the leads from Mr. McMillin
9 different than from Dr. Chmura?

10 A. No.

11 Q. So they were the same leads?

12 A. I thought you meant prospects.

13 Q. No, no. Were actual leads handed over to
14 Mr. Lombardo pertaining to Mr. McMillin, different
15 leads than those that Dr. Chmura had worked on?

16 A. Yes. As far as I can remember, yes.

17 Q. With respect to the leads that were from
18 Mr. McMillin, are you aware of any contact between
19 those leads when Mr. McMillin left and when
20 Mr. Lombardo started?

21 A. I can't be specific, but I know there was
22 ongoing dialogue with opportunities before the sales
23 team was organized.

24 Q. Can you be more specific? What do you mean
25 by, "before the sales team was organized"?

1 A. So Mr. McMillin had a series of very warm
2 leads, unsigned agreements that were already out there
3 in the hands of the potential client. So they varied.

4 Q. What, if any, of Mr. McMillin's leads
5 closed between the time he left the company and the
6 time Mr. Lombardo started?

7 A. I know -- say that again?

8 Q. What leads, if any, closed between the time
9 Mr. McMillin left the company and the time Mr. Lombardo
10 started?

11 A. So I know in Salesforce there is a signed
12 agreement with lead Telsey (ph) with Mr. McMillin's
13 name on it.

14 Q. Did Mr. McMillin close that?

15 A. Did Mr. McMillin sign it? He did.

16 Q. So he would have been there at the time --
17 he would have been employed by Chmura at the time that
18 that was signed, correct?

19 A. Not necessarily. You can have a license
20 agreement waiting on a signature.

21 Q. So does Chmura sign -- or a representative
22 of Chmura sign the agreement before it is sent to a
23 prospective client?

24 A. Yes, yes.

25 Q. How many warm leads, or very warm leads

1 were handed to Mr. Lombardo that were generated by
2 Mr. McMillin?

3 A. I don't know the number.

4 Q. Would that information be documented
5 anywhere?

6 A. Salesforce, if it is properly documented.

7 Q. Could you ballpark how many? 10, 20, 100?

8 A. I don't want to do that. That's guessing.

9 Q. How long is a lead very warm for?

10 A. Varies by client.

11 Q. What would be the range?

12 A. One day to one year.

13 Q. How was that determined, that length of
14 time?

15 A. Well, money. Budget.

16 Q. Can you explain how?

17 A. As we discussed last week, our business to
18 government client had longer sales cycles, typically,
19 than our business to business client. That's driven by
20 policy and practicality.

21 Q. The current sales team at Chmura, have they
22 been hitting their quotas from the time Mr. Lombardo
23 left to the current time?

24 A. They have not.

25 Q. Do you know the reason they haven't been

1 hitting those quotas?

2 A. They're very young.

3 Q. Are they inexperienced?

4 A. Very.

5 Q. Does the company currently have any senior
6 account managers?

7 A. No.

8 Q. Were there any warm leads after -- that
9 Mr. Lombardo had that were distributed after his
10 termination?

11 A. I'm sure there were, but I am not aware of
12 what they are.

13 Q. Are you aware of whether anyone worked
14 those leads?

15 A. I am sure they did that under Dr. Shelly's
16 watch, and he is making sure that everything is in
17 place.

18 Q. What is Dr. Shelly's background?

19 A. He is a Ph.D, a Harvard Fellow. He was a
20 professor at Wake Forrest, and now he works for Chmura.

21 Q. And what's his title at Chmura?

22 A. Right now he is the Director of Sales and
23 Education Specialist.

24 Q. And you probably have already answered
25 this, but does Chmura currently have a sales manager?

1 A. That's Dr. Shelly. He is an interim. We
2 are interviewing.

3 Q. Does he have any background in sales?

4 A. He was an entrepreneur for a couple years,
5 so, yeah, he had to survive.

6 Q. Does he have any sales management
7 experience?

8 A. He is getting that now.

9 Q. I want to show you what's been marked as
10 Defendant's Exhibit -- I believe it is -- V.

11 MS. COOPER: I am going to email Exhibit V
12 to you, Kelli. I'll represent that it's the Responses
13 to the Interrogatories. I did not have the
14 verification page attached to the original version that
15 I sent to you, Kelli, so I am going to send it with the
16 verification sheet attached.

17 - - - - -

18 (Thereupon, Deposition Exhibit V, Copy
19 of Chmura Economics & Analytics, LLC's
20 Objections and Responses to Richard
21 Lombardo's First Interrogatories with
22 Verification Page, was marked for
23 purposes of identification.)

24 - - - - -

25 Q. I am showing you what's been marked as

1 Defendant's Exhibit V, and I will hand over control.

2 A. (Reviewing.)

3 Q. Have you seen this document before,
4 Ms. Peterson?

5 A. Yes, ma'am.

6 Q. Did you have, or did you assist in the
7 preparation of the responses to these Interrogatories?

8 A. Yes, ma'am.

9 Q. If you can go to the very last page, and I
10 can scroll down there, (indicating). Is this
11 Dr. Chmura's signature?

12 A. It is.

13 Q. I want to direct your attention to
14 Number 17. If you just read through that and then the
15 substance of the response as well.

16 A. (Reviewing.)

17 Q. Have you had a chance to review it?

18 A. Yes.

19 Q. I just want to look at Number 2 for a
20 moment here, the company's position that Mr. Lombardo,
21 quote, Regularly exercised significant discretion when
22 performing his job duties.

23 Can you describe for me what your
24 understanding of his discretion is?

25 A. He was allowed the opportunity to prospect

1 in the whole United States in the manner that met his
2 goals, his percentage goals. Nobody prospected for
3 him. He managed the prospecting prospects.

4 Q. Okay. Any other discretion?

5 A. Any other discretion?

6 Q. Yes.

7 A. He had a lot of liberty in choosing
8 conferences to attend. He was, basically, a product
9 development adviser because he was battle tested and
10 knew what the clients needed more than we did.

11 Q. Anything else?

12 A. I mean, we can move on.

13 Q. Well, I am just asking, is that all the
14 discretion -- are those all the categories of
15 discretion that you believe Mr. Lombardo regularly
16 exercised?

17 A. I agree with everything in Paragraph 2.

18 Q. And Paragraph 2 -- well, let's see. It
19 says, "Offering substantial discounts to customers."
20 So is that another area where he exercised significant
21 discretion, according to you?

22 A. Yes.

23 Q. So going to the first category of
24 discretion you mentioned, was prospecting the whole
25 United States, correct?

1 A. Correct.

2 Q. Did any account -- let me ask this, did he
3 have discretion to prospect the whole U.S. throughout
4 his entire time at Chmura?

5 A. No.

6 Q. When did that change? Or let me rephrase.
7 How did it start? What was his discretion,
8 and, then, how did it change?

9 A. As the business grew, the plan was always
10 to add additional sales -- account managers to manage
11 sales. So as the business --

12 Q. So at the -- I'm sorry. Go ahead.

13 A. From 2015 until 2019, markets changed, so
14 did territory.

15 Q. So early on in his tenure with Chmura, he
16 prospected the whole U.S.; is that correct?

17 A. As I previously stated, yes.

18 Q. And then as time went on, was his territory
19 limited?

20 A. It was changed.

21 Q. Who made that change?

22 A. I'm sorry? Who made the change?

23 Q. Yes.

24 A. It was SEA Group.

25 Q. And Mr. Lombardo would have been informed

1 of this new territory; is that right?

2 A. Yeah.

3 Q. I think we already talked about choosing
4 conferences, which is the second area of discretion on
5 your list, but do you have any specific recollection of
6 conferences Mr. Lombardo recommended Chmura attend?

7 A. Texas Economic Development Conference was
8 his favorite. He had a lot of clients in Texas.

9 Q. Was he the first account manager to attend
10 the Texas Economic Development Conference?

11 A. Yes.

12 Q. Do you know how he learned about that
13 conference?

14 A. Through his clients.

15 Q. Prior to -- well, let me ask this, was he
16 allowed to attend that conference?

17 A. Yes.

18 Q. Was there any discussion prior to his
19 attendance -- let me rephrase that.

20 Was there any discussion regarding whether
21 a representative of Chmura should attend that
22 conference?

23 MS. SIEGMUND: Object to the form of the
24 question. You can answer.

25 A. Rick came to us and said, I am going to

1 this conference. And we said, great, go bring them in.

2 Q. Did Mr. Lombardo ask permission to attend
3 that conference?

4 A. Well, he was an employee.

5 Q. So what does that mean?

6 A. There is a chain of command. You go
7 through that when you are spending company's money.

8 Q. So he went up the chain of command before
9 attending the conference?

10 A. No, he let us know he was attending it and
11 we thought it was great.

12 Q. So when you say we, who is "we"?

13 A. SEA Group.

14 Q. So the SEA Group approved him attending
15 that conference?

16 A. SEA Group was excited about it, yeah.

17 Q. If SEA Group hadn't been excited about it,
18 would he still be permitted to go?

19 MS. SIEGMUND: Object to the form of the
20 question. You can answer.

21 A. So we are a consensus based organization
22 and, ultimately, if Rick wanted to go to that
23 conference, I would have been the voice of the business
24 reasons behind that, and he would have gone, and SEA
25 Group would have been fine with that.

1 Q. Okay. Was there ever a time Mr. Lombardo
2 asked to go to a conference, to your recollection, that
3 he was denied permission to attend?

4 A. In 2018, we did the most conferences we had
5 ever done, and we had to scale back in 2019 due to the
6 fact we had added 18 employees in 2018. So we had to
7 make budget decisions and cut back on conferences.
8 Mr. Lombardo was not given permission to do that.

9 Q. Okay. So Mr. Lombardo did ask to attend
10 certain conferences, at least in 2019, where he was not
11 given permission to attend; is that correct?

12 A. Where no one was given permission to
13 attend, that is correct, not just Mr. Lombardo.

14 Q. Now, you said that he also exercised
15 discretion with respect to product development, being a
16 product development adviser. Can you explain that a
17 little bit more?

18 A. Sure. In July of 2019, we actually brought
19 on a product manager. Prior to that, we were very
20 dependent on the account managers to bring back
21 innovative ideas from the field.

22 Q. What was the product manager's main, or
23 primary responsibility as of 2019 going forward?

24 A. He owns the road map, and he builds new
25 cases, and all the things that we never had anybody to

1 do for us before. But you'd have to talk to John about
2 that, John Chmura.

3 Q. So prior to Chmura retaining or hiring a
4 product manager, what specifically did Mr. Lombardo do
5 to assist with product development?

6 A. He often made ethic -- you know, there is
7 300 logs of him asking for GDP, for example. He worked
8 closely with I.T. to set the priorities of the road
9 map.

10 Q. When you say 300 logs, what you do you mean
11 by 300 logs?

12 A. Those are requests that are logged on
13 Onstage.

14 Q. Was GDP ever developed by Chmura?

15 A. Yes.

16 Q. When was it developed?

17 A. See, I can't remember that date.

18 Q. Has GBP -- sorry -- GDP been pushed to
19 market?

20 A. It's commercially available in JobsEQ.

21 Q. And Mr. Lombardo had asked 300 times prior
22 to it being pushed commercially; is that right?

23 A. No, that's just a number of times that he
24 recorded that we needed it, and a lot of people needed
25 it. So we were just playing catch-up, actually, with

1 GDP. It was a lot to bring that particular analytics
2 to the tool.

3 Q. So what recording? You said he would
4 record it. What recording was he doing?

5 A. I am sure that's a combination of
6 Salesforce, road map, postings Onstage, sales meetings.

7 Q. Was GDP Mr. Lombardo's independent idea?

8 MS. SIEGMUND: Object to the form of the
9 question. You can answer.

10 A. Mr. Lombardo is not an economist, nor is he
11 an I.T. person. The answer is, no.

12 Q. Looking back at this Exhibit V, as in
13 Victor, Number 2, I want to turn to talking about where
14 it says, "Regularly exercised significant discretion by
15 offering substantial discounts to customers." Do you
16 see that?

17 A. Yes, ma'am.

18 Q. What does that mean?

19 A. So Rick is the one that developed the
20 sublicense model.

21 Q. What is the sublicense model?

22 A. He was able to understand the business and
23 value proposition of aligning multiple clients under
24 one contract.

25 Q. Had that ever been done before Mr. Lombardo

1 started at the company?

2 A. No, that was created by Rick -- sorry, Mr.
3 Lombardo.

4 Q. Can you explain what you mean by aligning
5 multiple -- I apologize, I am going to ask you to say
6 it again. Sorry, let me rephrase.

7 The sublicense model you are talking about,
8 can you explain how the pricing would work on that?

9 A. 50% discount if you are a sublicensee.

10 Q. What is a sublicensee?

11 A. Someone that has come under a master
12 license or a parent.

13 Q. Would these, the licensee and sublicensee
14 be related entities?

15 A. There is a value proposition for them to be
16 brought together.

17 Q. Was the pricing for this model set before
18 Mr. Lombardo started at Chmura?

19 A. No.

20 Q. Chmura has what are called pricing
21 matrixes, correct?

22 A. Correct.

23 Q. How are pricing matrixes developed?

24 A. The Pricing Committee sit down and do --

25 Q. Who's on that -- sorry.

1 A. -- do a lot of math analysis of
2 populations, analysis of demographics, competitive
3 analysis. And the Pricing Committee, largely driven by
4 Greg Chmura, develop the matrices with input from the
5 account managers, of course.

6 Q. Who sits on the Pricing Committee?

7 A. Greg Chmura, Sharon Simmons, Leslie
8 Peterson.

9 Q. How many -- let me rephrase that.
10 When was the first pricing matrix put out
11 by Chmura?

12 A. I don't remember.

13 Q. Would it have been before Mr. Lombardo
14 started with the company?

15 A. No, no.

16 Q. When Mr. Lombardo started, then, how was
17 Mr. Lombardo supposed to know how supposed to price the
18 product?

19 A. We just had two price points based on
20 population, 7995 and 9995.

21 Q. How many pricing matrices since the
22 beginning -- or let me ask this: Are they numbered, the
23 pricing matrices, if they change?

24 A. Of course.

25 Q. What number is Chmura up to on their

1 pricing matrix?

2 A. You know, I think it is around 24, 25.

3 Q. And each different pricing matrix would
4 have a change in price on it, correct?

5 A. There are some things would have changed.

6 Q. Okay. What other things could change on a
7 pricing matrix?

8 A. I think the first or second iteration we
9 added 75-mile radius. There is an MSA version, there
10 is a county version, there is a regional version, there
11 is an opportunity version. Businesses evolve over
12 time.

13 Q. Is there one matrix used in any given point
14 in time or -- let me re-ask that.

15 Is there one matrix used at any point in
16 time?

17 A. I don't understand that question. Sorry.

18 Q. That's okay. I will rephrase it.

19 So you have approximately 24 pricing
20 matrices currently. Can an account manager price based
21 on any one of those, or only based on the most current
22 pricing matrix?

23 A. The most current, but that's not to say
24 that a deal will come in that gets priced based on a
25 previous one.

1 Q. Is that because the deal could already have
2 gone out before -- be quoted and gone out before the
3 new pricing matrix went into effect?

4 A. Yes.

5 Q. I am going to show you what's been
6 marked -- actually two documents, what's been marked
7 Exhibit AA. We will start with AA.

8 - - - - -

9 (Thereupon, Confidential Deposition
10 Exhibit AA, Copy of Pricing Matrix
11 Bates CHMURA0204226, was marked for
12 identification.)

13 - - - - -

14 A. (Reviewing.)

15 Q. Do you recognize this document? I will let
16 you take a look at it.

17 A. I recognize it, but I can't read it. It is
18 too small.

19 Q. Okay. I'll see if I can help with that.
20 (Indicating). Is that better?

21 A. Yes.

22 Q. Do you know what this is?

23 A. That's a typical pricing matrix. I don't
24 know which version it is.

25 Q. You already answered my question.

1 Okay. In using this pricing matrix as an
2 example, it contains -- actually, if you could walk me
3 through it a little bit. It has, Postsecondary, not
4 EDO, at the very top. What does that refer to?

5 A. If it is a post secondary, it is education
6 and not an economic development organization.

7 Q. And so would you look at that top line
8 where it says, ENR equals less than 5000, 5 to 10,000,
9 10 to 20,000, 20,000 and up? Are those the columns you
10 would look down to price for postsecondary?

11 A. You are asking me to look at the 5K
12 columns, or asking me --

13 Q. How would I -- I am going to ask a more
14 general question. I think it would be easier than me
15 trying to guess.

16 Walk me through using this pricing matrix.
17 If I were an account manager working for Chmura, how
18 would I use this pricing matrix?

19 A. Well, for one thing, I would have rows and
20 columns in there so I know which row I'm on, and these
21 -- I guess this is scanned. So the biggest driver in a
22 pricing matrix in an organization is price and
23 population per capita. And this breaks this all out
24 into easy to use, user type.

25 Q. And what are the user types on, if you can

1 point me to the user type on this particular pricing
2 matrix.

3 A. Well, you can have, state economic
4 development organizations, you can have private
5 consultants, you can have university economic
6 development organizations, utility companies. And that
7 last column is Rick Lombardo's column. He is the one
8 that -- was strategic enough to go after the small
9 counties that our competition was ignoring.

10 Q. And then tell me how to use this. If I
11 were pricing, let's take an example. If I were pricing
12 to a utility company, how would I know what to charge
13 for a new contract for JobsEQ?

14 A. So you work with the primary region and
15 then you use the factors that are laid out under
16 utilities.

17 Q. And what are those?

18 A. They may just want -- they might want zip
19 code level data. They might want to add additional
20 states. They might want to add additional counties.
21 They might want the whole nation. They can add
22 additional seats.

23 Q. So let's say I was the utility company, or
24 I'm selling to the utility company that wants just
25 their region.

1 A. What do you mean by region? Region is
2 anything lower than a state.

3 Q. Okay. Well, I am just trying to understand
4 how to use this, that's all. I am trying to understand
5 from the account manager perspective how would I go
6 about pricing. And you can give me any example you
7 want to give me, but if you can show me how to use this
8 to price a particular product, how would I go about
9 doing that?

10 A. So let's say you are Scott County, Virginia
11 and your population is less than \$50,000 and you want
12 zip code level data for Scott County, then you are
13 going to have a price that the population is not going
14 to support that price, but it is under 50k population,
15 so it is \$5,000.

16 Q. Okay. Now, underneath the chart, there is
17 a section called, "Discounting Tools -- discounts
18 cannot be combined". Do you see that?

19 A. Yes, ma'am.

20 Q. Can you explain to me what that is?

21 A. It's a multi-year discount that can be
22 either two years -- if it's two years, there's 5% off
23 of each year. It can be a three year which gets you 7%
24 off of each year.

25 Q. And then Number 2 underneath Discounting

1 Tools says, "Can take up to 10% off the list price, but
2 the price never drops lower than 5,000"; is that
3 correct?

4 A. Yes, that's driven by that single county
5 rate.

6 Q. And the list price is what's in the chart
7 above; is that correct?

8 A. Yes.

9 Q. And then there is a Sublicense, Number 3,
10 that says, "20% off the price of that sublicense had
11 the sublicensee purchased the package on their own.
12 Parent license is undiscounted and is defined as the
13 highest priced individual package. All sublicensees
14 must sign up at the original point of purchase." Is
15 that the sublicense model you were talking about
16 earlier?

17 A. That is the sublicense model that I believe
18 -- I mean, I haven't looked at this in years. I don't
19 pay attention to this. My understanding of it is a 50%
20 discount, so I may be wrong.

21 Q. But that's the model you were referring
22 to -- regardless of percentage, that was the model,
23 correct?

24 A. Yes.

25 Q. Outside of these discounts -- well, let me

1 ask, how could account managers use these discounting
2 tools?

3 A. So they would start with list, which is
4 where they want to get because they get the biggest
5 commissions there, and then in the process of
6 discovery, they discover what their price point is.
7 But based on price point and based on region and based
8 on user type, you begin to discount. You might start
9 with 1%, you might start with 2%. And Rick was very
10 good at this. He was very good at helping the company
11 maximize that opportunity.

12 Q. When you say, "the company," do you mean
13 Chmura or -- who are you referring to as the company?

14 A. Chmura.

15 Q. To your knowledge, did Mr. Lombardo seek
16 approval prior to offering a discount?

17 A. I mean, he often came to me with a reason
18 why we had to go with a certain price, and I always
19 said, what do you recommend, Rick? And then that's
20 what we would go with.

21 Q. But he would come to you before offering it
22 to the potential client, or client, right?

23 MS. SIEGMUND: Object to the form of the
24 question. You can answer.

25 A. He had the freedom to take discounts

1 without coming to me.

2 Q. And those are the discounts that are set
3 out on the pricing matrix; is that correct?

4 A. On this particular one, yes, but I don't
5 know which version this is. I know they have up to 30%
6 discretion now.

7 Q. And would that 30% be found on a pricing
8 matrix?

9 A. Yes.

10 Q. I am going to show you what's been marked
11 as Exhibit AB, probably too small. I will make it
12 bigger.

13 - - - - -
14 (Thereupon, Confidential Deposition
15 Exhibit AB, Copy of Pricing Matrix
16 Bates CHMURA0204227, was marked for
17 identification.)

18 - - - - -

19 Q. Is this also a pricing matrix?

20 A. Just a version of it.

21 Q. Do you know which version this is, which
22 number?

23 A. I do not, no.

24 Q. And I assume this works in the same manner
25 as the last pricing matrix that we looked at?

1 A. Yes.

2 Q. And, again, you don't recall which version
3 this pricing matrix that's in front of you now, Exhibit
4 AB, is; is that correct?

5 A. I do not know which version this is.

6 Q. If an account manager wanted to offer a
7 discount, and maybe I already asked this, so forgive
8 me.

9 If an account manager wanted to offer a
10 discount beyond what's listed under these Discounting
11 Tools in either Exhibit AB or AA, or whatever the
12 current matrix as it exists, would they have to seek
13 approval from someone?

14 A. Well, two eyes are always better than one.

15 Q. So the answer is, yes, they would have to
16 seek approval?

17 A. They would want to.

18 Q. Well, would they have to? Were they
19 directed to?

20 A. Yes.

21 Q. And would that have also applied to
22 Mr. Lombardo when he was employed?

23 A. Yes.

24 Q. Going back to you testifying that Mr.
25 Lombardo developed a sublicense model, do you remember

1 when he developed that?

2 A. 2015.

3 Q. And did you have personal discussions with
4 him regarding that model?

5 A. Yes.

6 Q. And do you recall the substance of those
7 communications?

8 A. The substance of them?

9 Q. Yes.

10 A. Yes. It was brilliant.

11 Q. What was the actual substance of the
12 conversation you had with him regarding the sublicense
13 model?

14 A. He began to see in Salesforce how to set up
15 a parent account, and then how to set up each child,
16 and he bridged that model into the industry that he was
17 -- industries that he was prospecting to and was able
18 to act as an adviser, a trusted adviser, to his client
19 about how they can come together and work together and
20 at a better price point than if they were individually
21 licensed.

22 Q. Who made the determination that 50% would
23 be the proper discount?

24 A. Mr. Lombardo.

25 Q. Did someone have to approve that discount?

1 A. No, It became a new model, a sublicense
2 model. It is on the pricing matrix.

3 Q. Did Mr. Lombardo put it on the pricing
4 matrix?

5 A. Oh, no, I am sure that was Greg, Greg
6 Chmura.

7 Q. You said earlier there was a Pricing
8 Committee. Mr. Lombardo was not on that Pricing
9 Committee, correct?

10 A. He was an adviser to that committee.

11 Q. Did he sit on the committee?

12 A. They brought him in often, yeah, set up
13 a --

14 Q. Was Mr. Lombardo a named member of that
15 committee?

16 A. No.

17 Q. And I apologize, do you recall when -- I
18 think I already asked this, but do you recall
19 approximately when Chmura first introduced the pricing
20 matrix?

21 A. No, I don't.

22 Q. I am going to show you what has been marked
23 as Defendant's Exhibit N, and I think we already went
24 through this the other day, but I just want to take one
25 more look at it here.

1 - - - - -

2 (Previously Marked Deposition Exhibit
3 N, Copy of Email Dated 1/127/2017 from
4 Leslie Peterson, Bates Chmura0056740,
5 was shown to the witness.)

6 - - - - -

7 Q. Do you recognize this document?

8 A. Yes, ma'am.

9 Q. Is this -- it is an email from you to
10 Mr. Lombardo, Mr. Steele, Ms. Ludvik, Mr. Grebenc?

11 A. And Mr. Cox, correct. Yes, we talked about
12 it last week.

13 Q. Okay. I thought we had, but that was last
14 week, so forgive me, my brain is tired. But as sales
15 matrix -- on your email here -- you drafted this email,
16 correct?

17 A. Yes.

18 Q. And it says, "Discounts beyond those
19 documented in the sales matrix pricing sheet need to be
20 individually approved by me," correct?

21 A. Yes.

22 Q. So at least as of 2017, there was a sales
23 matrix pricing sheet, correct?

24 A. Yes.

25 Q. Do you recall if the first pricing matrix

1 was in 2016?

2 A. I don't want to commit to that because I
3 don't recall.

4 Q. Was the sublicensing model we have been
5 talking about on the first pricing matrix?

6 A. Yes.

7 Q. And Mr. Lombardo, according to you,
8 developed that in 2015, correct?

9 A. Correct.

10 Q. So is it possible that the first pricing
11 matrix came out in 2015?

12 A. Not going to commit to that. I don't know.

13 Q. Do you know who is responsible for
14 preparing the pricing matrix?

15 A. Greg Chmura.

16 Q. I am going to show you what's been marked
17 Defendant's Exhibit S, and if you want to go ahead and
18 look at this.

19 - - - - -

20 (Thereupon, Previously Marked Exhibit
21 S, Copy of Standard Operating
22 Procedures Dated 4/5/2019, was shown
23 for purposes of identification.)

24 - - - - -

25 A. (Reviewing.)

1 Q. Ready?

2 A. Yes.

3 Q. Do you recognize this document?

4 A. I know what it is. A disappointment.

5 Q. Well, what is it? Other than a
6 disappointment, your words, not mine, what is it?

7 A. It's standard operating procedures for the
8 sales team --

9 Q. And that's --

10 A. -- for the technology department.

11 Q. Sorry. And this was dated April 5, 2019,
12 correct?

13 A. Yes.

14 Q. To your knowledge, were there standard
15 operating procedures that predated the April 5, 2019
16 version?

17 A. Yes, 2017.

18 Q. Was that when they were implemented?

19 A. Yes.

20 Q. Do you know who prepared the April 5, 2019
21 version?

22 A. Mr. Auerbach.

23 Q. When did Mr. Auerbach begin working for
24 Chmura?

25 A. In April 2019, and that was his first

1 assignment.

2 Q. Was this version of the standard operating
3 procedures implemented?

4 A. I don't think so. I don't recognize that
5 date that was April whatever it was. This appears to
6 me to be more in line with what we adopted in 2017. So
7 I don't know why there is a date change, but this is
8 not what I thought you were going to show me.

9 Q. Let me show you another document and we can
10 come back to this one. I am going to show you what's
11 been marked as an exhibit. I think this might help.
12 Exhibit T. It has an email in the front, but if you
13 scroll down, and I will let you take a look at it. You
14 will see one -- a standard operating procedures dated
15 July 10, 2019. This may be the one you are referring
16 to.

17 - - - - -

18 (Previously Marked Deposition Exhibit
19 T, Copy of Email with Standard
20 Operating Procedures Dated 7/10/2019
21 Attached, was shown to the witness.)

22 - - - - -

23 A. Okay.

24 Q. I will have you take look at that at your
25 leisure.

1 A. (Reviewing.)

2 MS. SIEGMUND: We are ready.

3 Q. Do you recognize this document?

4 A. Yes.

5 Q. What is this?

6 A. It's the latest version of the standard
7 operating procedures.

8 Q. And was this version adopted by --
9 implemented by Chmura?

10 A. I don't know. All I heard is complaints
11 about it, so I guess it was.

12 Q. And do you know who prepared this version?

13 A. Mr. Auerbach.

14 Q. And the Exhibit S we were just looking at,
15 and you have control so you can scroll back to it if
16 you want to look at it. Exhibits S was not prepared by
17 Mr. Auerbach; is that correct?

18 A. No.

19 Q. And this would be --

20 A. I don't know why it has that date, but, no.

21 Q. So Exhibit S looks more like the original
22 version of the standard operating procedures; is that
23 right?

24 A. I mean, I can't respond by just giving you
25 a yes based on looking at the table of contents.

1 Q. Would Mr. Lombardo -- let me rephrase that.

2 If you look at Exhibit S for a moment,

3 let's switch back to Exhibit S.

4 A. (Indicating).

5 Q. These standard operating procedures, they
6 govern the sales team, correct?

7 A. They govern the processes.

8 Q. And what type of processes are set forth in
9 the standard operating procedures of Exhibit S?

10 A. The processes are what make us productive.
11 So the processes are there to reduce waste, increase
12 productivity, reduce transaction costs.

13 Q. And Mr. Lombardo would have been expected
14 to follow these standard operating procedures, correct?

15 A. Correct.

16 Q. And this one is dated April 5, 2019. It
17 has details surrounding a variety of different items,
18 including -- well, why don't you tell me. I mean, does
19 this -- what does this -- the standard operating
20 procedures encompass?

21 A. So are we on Exhibit S or T?

22 Q. Let's stick with S for now. We will stick
23 with that.

24 A. What's the date on S? I am sorry. Is it
25 April? Yes, it is.

1 Q. Yes, it is April 5, 2019.

2 A. Okay. And the question is what do they do?

3 Q. Yes.

4 A. They represent and reflect the health of
5 the organization. And when I say that, I mean, sales
6 and client, marketing, finance and the clients. So
7 those work together under the standard operating
8 procedures to reduce waste in the system, to allow for
9 a spirit of continuous improvement and to reflect the
10 transaction costs from one side of the house to the
11 other in terms of the dimensions of change.

12 Does that help?

13 Q. It does, yes. If you would turn to Page
14 16 -- it's actually Bates labeled -- 16 of the
15 document, but Bates labeled Chmura 0040753. And at the
16 very top is Section 6, it says, Price Negotiations.

17 A. (Indicating).

18 Q. I will let you take a look at this section.

19 A. (Reviewing.)

20 Q. And we'll just stick on this page for a
21 moment.

22 A. Okay.

23 Q. My first question is, what are contingency
24 responsible parties?

25 A. Well, contingency is plan B.

1 Q. So what does contingency responsible
2 parties mean in this context?

3 A. Subject matter expert.

4 Q. And what subject matter were these
5 responsible parties expert in?

6 A. What subject matter?

7 Q. Yes.

8 A. Well, I would be the subject matter expert
9 for sales, and Dr. Chmura would be the finance subject
10 matter expert.

11 Q. And this page is labeled, Price
12 Negotiations. It sets forth procedures with respect to
13 price negotiations, correct?

14 A. Not just price, but everything about it.

15 Q. What do you mean by that?

16 A. Pricing matrix, pricing exceptions,
17 additional sales.

18 Q. And Mr. Lombardo would have been -- let me
19 rephrase.

20 The account managers would have been
21 required to follow the standard operating procedures
22 with respect to price negotiations, correct?

23 A. Correct.

24 Q. And Mr. Lombardo also would have been
25 required to follow these standard operating procedures

1 with respect to price negotiations, correct?

2 A. So this is a perfect world, and we don't
3 live in a perfect world, so I can't make that -- I
4 can't say yes to that statement because you are asking
5 from paper, but then when it comes to reality, it often
6 changes.

7 Q. Was Mr. Lombardo required to follow the
8 standard operating procedures set forth in Section 6?

9 A. Yes.

10 Q. I want to turn to the next page,
11 conferences and travel.

12 A. (Reviewing.)

13 Q. If you go up to just under Procedures --
14 let me rephrase.

15 These procedures pertain to standard
16 operating procedures regarding conferences and travel
17 at Chmura, right?

18 A. Yes.

19 Q. And under Procedures, it has, Responsible
20 Party and Action Step, Conference Selection. Do you
21 see that?

22 A. Yes.

23 Q. And the Event Group comprised of CC. Is CC
24 Dr. Chmura?

25 A. Yes.

1 Q. And LP is you, correct?

2 A. Yes.

3 Q. And BK stands for bookkeeper?

4 A. Yes.

5 Q. And SM is for sales manager?

6 A. Yes.

7 Q. And is SS Ms. Simmons?

8 A. Yes.

9 Q. And KW would be Mr. West, correct?

10 A. Correct.

11 Q. And so Event Group under the standard
12 operating procedures was tasked with researching and
13 selecting conferences for Chmura employees to attend,
14 correct?

15 A. Correct.

16 Q. Was Mr. Lombardo part of that Event Group?

17 A. No. He invited himself out of it because
18 he had unethical travel behaviors. So he was no longer
19 invited. I think it was 2018, or is this the 2019
20 version? Yes, he was not in it. This would be -- most
21 of these exists because of Mr. Lombardo.

22 Q. So your testimony is that the standard
23 operating procedures exist because of Mr. Lombardo?

24 MS. SIEGMUND: Object to the form of the
25 question.

1 A. Some of the things that are in the standard
2 operating procedures under Conference/Travel are as a
3 result of mistakes by Mr. Lombardo.

4 Q. Well, we weren't talking about the travel.
5 We were just talking about the conference selection.
6 Mr. Lombardo was not part of the event group selecting
7 conferences, at least as of April 2019, correct?

8 A. Correct.

9 Q. All right. I want to turn to Exhibit T and
10 move away from Exhibit S. I think you earlier testified
11 that Mr. Auerbach prepared this version. Tell me
12 again, are you aware whether this version was
13 implemented, Exhibit T?

14 A. This must have been implemented because I
15 heard complaints about it, particularly from Finance.

16 Q. Was there any other version after Exhibit
17 T's date, whether it was July -- I have to scroll back
18 up to know for sure -- July 10, 2019 --

19 A. Well --

20 Q. Let me finish my question, only so we have
21 a clear record, please.

22 Was there any other version after this
23 July 10, 2019 version that would have been implemented
24 at the time of Mr. Lombardo's employment?

25 A. I'm not aware.

1 Q. What is it -- or, what complaints have you
2 heard about this particular version?

3 A. So there is a lot of concern around how
4 invoices get generated from Salesforce information to
5 the finance managers. So sloppy Best Practices are
6 existing, such as including an upsell, which is a
7 separate transaction from a JobsEQ license, bundling
8 those into one price. And then you go into the record,
9 into SaaS optics, and it shows up as two products with
10 one price, for example.

11 Q. That sounds confusing, a little bit.

12 Okay, I want to turn to Mr. Lombardo's
13 termination. You testified earlier that back in
14 March -- I am going to stop sharing so I can actually
15 see the screen. You testified back in March that you
16 were prepared to fire Mr. Lombardo, correct?

17 A. Yes.

18 Q. And then you decided against doing that,
19 right?

20 A. Yes.

21 Q. What led to Mr. Lombardo's termination --
22 first of all, do you recall what date Mr. Lombardo was
23 terminated?

24 A. October 30 or 31st, the last day of
25 October in 2017.

1 Q. Do you recall what --

2 A. Let me correct that. 2019.

3 Q. Do you recall what led to his termination?

4 A. Yes.

5 Q. And what was that?

6 A. So the information that I have on that,
7 largely comes from Mr. Auerbach.

8 Q. Okay. Were you part of the decision to
9 terminate Mr. Lombardo?

10 A. I was.

11 Q. Was there a primary decision maker who
12 decided to terminate him?

13 A. SEA Group decided to terminate him, and I
14 was the one that, I think I stated before, I was still
15 not ready to fire Rick. I was the last holdout.

16 Q. And what --

17 A. And then Greg --

18 Q. I'm sorry. Go ahead. Finish.

19 A. Then Greg was -- I am not in Cleveland, so
20 I don't see the drama that's going on. Greg felt very
21 strongly that the Sales Department had been through so
22 much with Mr. Lombardo, so much emotion and so much
23 drama and so much foul language and unnecessary
24 attempts to take management down. And Mr. Auerbach was
25 part of that drama.

1 Q. And how was he part of that problem?

2 A. I would describe him as a mark.

3 Q. Okay. Can you think of a specific example,
4 just so I understand?

5 A. Yes. I mean he is middle management,
6 right? Middle management is supposed to be the
7 champion between account manager and management, a job
8 they are supposed to play. And that job was never
9 clear to me, maybe because I wasn't in Cleveland, but
10 Mr. Auerbach seemed to play both sides against the
11 middle.

12 Q. Prior to Mr. Lombardo's termination, did
13 you have any internal discussions regarding his
14 termination?

15 A. Yes, we did.

16 Q. What was the substance of those
17 discussions?

18 A. Protecting the sales team that was in place
19 was the substance of those discussions.

20 Q. Can you explain that a little bit further?

21 A. So the sales team is very young and
22 Mr. Lombardo would take them one by one to lunch and
23 feed them with reasons to not want to respect
24 management.

25 Q. Do you have any personal knowledge of the

1 conversations that Mr. Lombardo had with those account
2 managers?

3 A. I have information from one of the account
4 managers that I'm drawing from largely.

5 Q. And which account manager is that?

6 A. Stephanie Wiley.

7 Q. Did Mr. Lombardo ever take Stephanie Wiley
8 to lunch, to your knowledge?

9 A. Yes.

10 Q. Do you know if he was directed to take the
11 account managers to lunch?

12 A. No. I got a call from Eli and he said, is
13 it okay if Rick takes Stephanie to lunch today? And I
14 said, I would prefer another account manager be with
15 her, especially a female.

16 Q. Okay.

17 A. Just coming out of the Me Too movement, so
18 I did not want to put her in that situation. And they
19 went by themselves.

20 Q. Did Mr. Lombardo have a history of any
21 inappropriate contact?

22 A. No, that's just the way that I was taught
23 at Eastman Kodak, you never put yourself in a situation
24 to be one-on-one, female to male.

25 Q. So you were sensitive to what was going on

1 in current events; is that fair?

2 A. Yes.

3 Q. Who did you have discussions with
4 regarding -- let me put a time frame on this. In
5 October, who were you discussing Mr. Lombardo's
6 employment with, outside of counsel, if you had any
7 conversations with counsel?

8 A. SEA Group was meeting on it.

9 Q. And tell me, again, who is in SEA Group?

10 A. You want names or the number?

11 Q. Names, please.

12 A. Chris Chmura, Leslie Peterson, John Chmura,
13 Greg Chmura, Sharon Simmons, Xiaobing Shuai.

14 Q. At the time Mr. Lombardo was terminated,
15 Chmura had an H.R. director, correct?

16 A. Yes.

17 Q. Was that Aisha Ortiz?

18 A. Ortiz. Yeah, Ortiz.

19 Q. What was her role with respect to
20 Mr. Lombardo's termination?

21 A. She was an adviser to SEA Group.

22 Q. And what advice did she provide?

23 A. We want to be able to separate from
24 Mr. Lombardo with the least amount of damage.

25 Q. Okay. And how did Chmura propose going

1 about that?

2 A. Didn't propose. It came from Mr. Auerbach.

3 Q. What Did Mr. Auerbach propose?

4 A. He proposed a buyout.

5 Q. And did the SEA Group take that advice?

6 MS. SIEGMUND: Object to the form of the
7 question. You can answer.

8 A. We thought about it.

9 Q. And what did you ultimately decide to do?

10 A. Not do that.

11 Q. And why?

12 A. We had never given a buyout to anybody we
13 terminated, why would we do it for Mr. Lombardo?

14 Q. Was there any discussion regarding trying
15 to get Mr. Lombardo to resign?

16 A. No.

17 Q. Were you involved in the decision to put
18 Mr. Lombardo on unpaid leave in October of 2019?

19 A. I know about it, with a recommendation
20 between Aisha and Operation, Sharon. I knew about it.
21 I was aware.

22 Q. You were aware. Did you have any further
23 involvement other than just aware of it?

24 A. No.

25 MS. COOPER: Can we take a short break ?

1 MS. SIEGMUND: Sure. Five minutes, 10
2 minutes?

3 MS. COOPER: Five minutes is good.

4 - - - - -

5 (Short recess taken).

6 - - - - -

7 MS. COOPER: Ms. Peterson, I do not have
8 any more questions for you. I want to thank you for
9 your time.

10 THE WITNESS: You're welcome.

11 MS. SIEGMUND: I don't have any questions.
12 Rough for us, please.

13 MS. COOPER: Standard transcript.

14 MS. SIEGMUND: She will read.

15

16 (Whereupon, deposition was concluded at 1:46 p.m.)

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1 Whereupon, Counsel was requested to give instruction
2 regarding the witness's review of the transcript
3 pursuant to the Civil Rules.

4
5 SIGNATURE:

6
7 Transcript review was requested pursuant to the
8 applicable Rules of Civil Procedure.

9
10 TRANSCRIPT DELIVERY:

11 Counsel was requested to give instruction regarding
12 delivery date of transcript.

13 Ms. Cooper, Original transcript, yes.

14 Ms. Siegmund, Rough and Certified
15 transcript, yes.

REPORTER'S CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

I, KELLIANN D. LINBERG, RPR, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, LESLIE PETERSON, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

1 I do further certify that I am not a
2 relative, counsel or attorney for either party, or
3 otherwise interested in the event of this action.

4
5 IN WITNESS WHEREOF, I have hereunto set my
6 hand and affixed my seal of office at Cleveland, Ohio,
7 on this 14th day of May, 2020.

8
9
10
11 
12

13 Kelliann D. Linberg, R.P.R.,
14 Notary Public within and for
15 the State of Ohio
16

17 My commission expires May 25, 2024.
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